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ABSTRACT

In recent years, new and powerful legal tools have been forged to get information on social problems into the hands of the public. Yet many people who would put the information to work know little or nothing about the tools for getting it. This book attempts to draw together available information about getting and using public data. It is keyed to the needs of both the social activist and his lawyer. Part 1: How to get the information is primarily for the social activist and researcher, offering fairly simple, practical advice about gathering information. Part 2: How to use the information offers some practical illustrations from cases in the major controversial fields of education, employment, and transportation. Part 3: Source materials on information laws provides references to all major statutes. The full text of the federal act is included. After reading this book citizens should consult public interest law firms, neighborhood legal services, and civil liberties lawyers regarding what can be done under the law in these areas. (Author/NH)

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THE DAMNED INFORMATION

Acquiring and using public information to force social change.

by JULIUS W. HOBSON

Legal discussion and analysis of
the Federal Freedom of Information of Information Act
and similar laws in 50 states

LI 003 069

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PREFACE

This preface is being written during the pendency of the suit by the Department of Justice to enjoin the *New York Times,* the *Washington Post,* the *Boston Globe,* and the *Chicago Sun Times* from publishing material relative to our nation's involvement in Vietnam. At present, this matter remains unresolved; however, it appears that it will be taken before the Supreme Court, where the basic question of our rights under the First Amendment of the Constitution will be applied to this situation.

It has long been my belief that in a democratic society such as ours, the people have a basic right to information about their government. Without free access to information, the guarantees of other freedoms would be mere hollow phrases in the Bill of Rights, for the freedoms could be abrogated in secret by those clothed in the brief authority of government.

The gradual abridgement of the public's right to know has been aided by the vagueness of the law. In the past, the right of access to government information was obviously so fundamental that the Congress apparently felt that the right to know should need no statutory protection. This is no longer the case, however, for in 1966, Congress enacted the Freedom of Information Act, which went into effect on July 4, 1967. This act reversed the long-standing government information policies and customs which limited public access to information.

Unfortunately, there is a widespread information gap—affecting the public, including the news media and government—regarding the provisions of the law. There have been numerous instances of low-level officials denying the release of information, the withholding of which could not be legally justified. To compound this error, the person to whom the information was denied frequently was not aware of the administrative appeal procedures available to him.

As the former Chairman of the Foreign Operations and Government Information Subcommittee, which developed the legislation creating the Freedom of Information Act, I am all too familiar with cases where individuals have given up without exercising their rights under this law.

While the Freedom of Information Act has opened the door to information in many instances during the past five years since its enactment, I must confess some disappointment that it has not been utilized as much as it should have. Despite its presence on the books, some people are still willing to accept a brush-off on their information requests from government agencies. It is for this reason that this book has been written. Not only is it a valuable tool in illustrating how the law can work for the individual, but it also is an important contribution toward enlightening the public as to the avenues of recourse available to them in cases where they are denied their right to information.

Regrettably, justice is not inexpensive. We find this problem most prevalent with ordinary citizens seeking information. They simply cannot afford the court and legal fees necessary to press their cases. It has been suggested that the Subcommittee consider changing the law, so that when the government loses in a Freedom of Information court contest, it would be required to pay the plaintiff's court costs. This change would no doubt make more agencies think twice before sending their plentiful legal talent to court.

On the other hand, government agencies are making much more information available on an inquiry basis than before the act. Its very existence discourages refusals, especially on matters where an agency knows that it would not have a chance of winning in court. This is reflected in complaints that have come before the Subcommittee where an individual has been turned down on his first request for information and then was advised by us to use the appeal procedure, citing the Freedom of Information Act. When the agency is aware that a case is being built which could conceivably end up in court, it often makes the requested information available.

This text offers the individual an opportunity to examine a step-by-step analysis of how the law can be applied to a number of common situations. It is my hope that it encourages the reader to exercise his rights under the law.

John E. Moss
Member of Congress

INTRODUCTION

In recent years, new legal tools have been forged to get information on social problems into the hands of the public. These tools, while not perfect, are very powerful. Yet many people who would put the information to work know little or nothing about the tools for getting it.

Minority groups in this country are particularly concerned with obtaining accurate information on the various forms of discrimination in the distribution of public resources in terms of jobs, housing, etc. Faced with discrimination in educational opportunities, employment, housing, transportation, public health, and other community services, blacks and other minority group members are confronted with ever-pressing questions such as, "How do you prove discrimination in employment?" "How do you measure discrimination in education?" and, "How do you combat discrimination in housing?"

Many groups of citizens, particularly in the large cities of the country, are seeking to improve the quality of their lives by advocating and forcing social change through avenues such as the federal and state courts, state legislatures, and other local governing bodies including school boards. Almost always, these citizens run into public officials who take lightly their desires to obtain public documents, attend public meetings, and examine public records—thus, the need for good federal and state access statutes (public information laws protecting the citizen's right to know).

This book, therefore, attempts to draw together available information about getting and using public data. It is keyed to the needs of both the social activist and his lawyer. It is divided into three major parts:

1. How to get the information is primarily for the social activist and researcher, offering fairly simple, practical advice about gathering information. The last section, the sample pleadings in a lawsuit to obtain government information, is for both the social activist and the lawyer. We have specifically refrained from going into an extensive legal discussion here because we have provided a complete legal bibliography on the practical and theoretical aspects of this subject. This is not an attempt to teach law, but rather it is an effort to alert individuals to some of the legal avenues down which they may go in dealing with social, economic, and political problems.

2. How to use the information. We offer some practical illustrations from cases in the major controversial fields of education, employment, and transportation. Going over these examples may suggest new ideas useful in these as well as other related fields. Only a small part of the records and opinions in these cases is reproduced; however, the citations are provided so that those interested in going into them more fully can obtain and read the official reports.

3. Source materials on information laws. In this part of the book, we provide references to all major statutes. The full text of the federal act is included. The California statute is also reproduced in full because it is the most extensive recent state enactment inviting discussion and comparison. The state-by-state analysis, in addition to its quick reference features, also invites further discussion and comparison.

After reading this book, citizens should consult public interest law firms, neighborhood legal services, and civil liberties lawyers regarding what can be done under the law in these areas.

Julius W. Hobson, *Director*
WIQE

Landon G. Dowdey, *Lawyer*
Dowdey, Levy, and Cohen; Washington, D.C.

PRACTICAL DIRECTIONS FOR REQUESTING INFORMATION

The following suggestions are keyed for use in dealing with federal agencies; however, modified slightly to suit local conditions, they should prove useful with state and municipal agencies as well. See state-by-state analysis below for references to local procedures.

The Freedom of Information Act, 5 U.S.C. 552, gives citizens the right to obtain information in the possession of United States agencies. Each agency —or if it is part of a larger department, the department—has regulations (found in the Code of Federal Regulations) that set forth the procedure for requesting information for that particular agency. Procedures may also be ascertained by calling the agency involved and asking for its Office of Public Information. Usually, the procedure is very simple:

1. You write a letter to the information officer of the agency, identifying the information sought. The agencies are under no obligation to compile new records for you. They are only obliged to give you records already in existence. The letter should indicate whether you wish access to the records for perusal and note-making or whether you actually want copies of the records sent to you. The latter can become expensive. Ask the agency to tell you the cost before sending you the records. A prompt reply and, in the event of a denial of your request, a written explanation of the reasons therefor, should also be requested.

(Your address)
(Date)

(Name and address of agency information officer)

Dear _____
(Name or title of information officer)

Pursuant to the Freedom of Information Act, 5 U.S.C. 552, and to the regulations of the Department of _____
(Name of agency or department)

_____ C.F.R. _____*, I hereby request access to
(Citation to regulations)

(or a copy of) _____
(Identify record(s) sought in as much detail as necessary)

I would appreciate a response from you at your earliest convenience. If this request should be denied, I would appreciate a written explanation of the reasons therefor under the Freedom of information Act.

Thank you for your prompt attention to this matter.

Sincerely,

(Your signature)

*Regulations need not be referred to and/or cited if you have difficulty locating them.

2. If your request is denied, most regulations provide for an appeal to a specified higher agency official. In your appeal letter, it is wise to spell out the reasons why you think you are entitled to the information under the Freedom of Information Act and to answer any arguments the agency may have presented in its letter of denial. There are nine exemptions to the Freedom of Information Act (5 U.S.C. 552(b)(1) - (9)). These categories include matters such as trade secrets; confidential, commercial, or financial information; intra-agency memoranda; etc. There are cases limiting the application of most of these exemptions now, so before deciding not to make or pursue a request simply because it appears that you might be asking for "trade secrets" information, for example, you should consult the case law. It is important to remember that, even if parts of the records you request are, in fact, exempt from disclosure under the law, the agencies must give you access to all portions of such records which are not so exempt.

3. If your appeal is turned down, the Freedom of Information Act provides that you may take the matter to court. Copies of all your correspondence with the agency should be maintained for this eventuality. While the judicial process need not be too costly, it may take some time for a decision to be reached in a particular case.

4. Last, but far from least, it is important to remember that you have a congressman in Washington. A direct appeal to him will usually bring an inquiry on your behalf to the agency involved. Congressmen like to do more or less routine favors such as this for constituents, and the agencies are anxious to oblige when they get mail or telephone inquiries from a congressman or senator's office. It saves a lot of appeals and lawsuits. Furthermore, if the congressman is sympathetic to your cause, he may demand and obtain information you could never possibly secure. He may even go so far as to conduct a public hearing. Data gathered at such a congressional hearing provided the basic information used to initiate *Hobson v. Hansen* and also *Hobson v. Hampton.*

SAMPLE PLEADINGS

In lawsuits to obtain public information

The following court papers were filed in the United States District Court for the District of Columbia in two recent cases seeking information from federal agencies under the Federal Freedom of Information Act.

These pending cases illustrate not only the appropriate legal forms, but also they illustrate the way two sophisticated public interest groups went about gathering information, the difficulties they encountered, and how they overcame them.

We are indebted to William A. Dobrovir and Joan M. Katz, both of Washington, D.C., who served as counsel for the plaintiffs in these cases and prepared most of the pleadings which follow. While keyed to practice in the federal courts under the federal act, these pleadings should be helpful in state courts under local statutes.

COMPLAINT

In action against the Secretary of Agriculture to obtain information about pesticides

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HARRISON WELLFORD
6034 Broad Street
Brookmont, Maryland

JOE TOM EASLEY
906 Keith Lane
Austin, Texas 78705

BERNARD NEVAS
333 A Harvard Street, #4
Cambridge, Massachusetts 02139

Plaintiffs,

v.

Civil Action
No. 740-70

CLIFFORD HARDIN, Secretary of Agriculture
Department of Agriculture
Independence Avenue between 12th and 14th
Streets, N.W.
Washington, D.C. 20250

GEORGE W. IRVING, JR., Administrator
Agricultural Research Service
Department of Agriculture . . .

F. R. MANGHAM, Deputy Administrator
Agricultural Research Service
Department of Agriculture . . .

H. W. HAYS, Director
Pesticide Regulation Division
Agricultural Research Service
Department of Agriculture . . .

PESTICIDE REGULATION DIVISION
Agricultural Research Service
Department of Agriculture. . .

DEPARTMENT OF AGRICULTURE
Independence Avenue between 12th and 14th
Streets, N.W.
Washington, D.C. 20250

Defendants.

COMPLAINT FOR INJUNCTION AGAINST UNLAWFUL WITHHOLDING OF RECORDS AND FOR ORDER FOR PRODUCTION OF RECORDS

1. This is an action under the Freedom of Information Act, 5 U.S.C. 552, to enjoin defendants from withholding certain specified records maintained by defendants, and to order them immediately to produce, and permit plaintiffs to inspect and copy, these records.

2. This action arises under Section (a)(3) of the Freedom of Information Act, 81 Stat. 54, 5 U.S.C. 552 (1967). This court has jurisdiction pursuant to the provisions of 5 U.S.C. 552 (a) (3).

3. The agency records sought to be produced in this action are located within the District of Columbia.

4. Plaintiffs are "persons" within the meaning of 5 U.S.C. 552.

5. The defendants Department of Agriculture ("Department") and Pesticide Regulation Division ("P.R.D.") of the Agricultural Research Service ("A.R.S.") are agencies within the definition of 5 U.S.C. 552. The defendant Clifford Hardin is Secretary of Agriculture and head of the Department; defendant Hays is Director of the P.R.D.; defendant Mangham is Deputy Administrator for Administration of A.R.S.

6. In the summer of 1969, plaintiff Wellford undertook the supervision of two law students, plaintiffs Joe Tom Easley and Bernard Nevas, in a study of the P.R.D.

7. On June 30, 1969, plaintiff Easley, acting on behalf of all three plaintiffs, submitted to defend-

ants Hays and Mangham a written request (Exhibit 1) to inspect and/or copy 14 specifically identified groups of records of the P.R.S. The records involved related to various facets of the agency's pesticide regulation program. At the same time, Easley made an oral request of Hays for examination of the registration file for a pesticide known as Shell Vapona "No-Pest Strip".

8. Defendants refused to grant immediate access to any of the records requested, and Hays suggested that Easley and Nevas enter into a series of briefings with P.R.D. staff members, giving as a reason that the request for documents would thereby be made more specific.

9. A briefing session was held on July 1, 1969, but on July 2, 1969, Hays informed Easley and Nevas that no further sessions would be held, and that none of the records requested would be made available. At Hays' request, Easley put his request for the Shell Vapona "No-Pest Strip" file in writing (Exhibit 2).

10. On July 7, 1969, Hays denied Easley's request for the Shell Vapona "No-Pest Strip" file (Exhibit 3).

11. On July 23, 1969, defendant Mangham wrote Easley, granting the request for certain items (Nos. 8, 10, and 13), referring plaintiffs elsewhere for one item (No. 9) and denying the rest (Nos. 1-7, 11, 12, and 14) (Exhibit 4).

12. On August 15, 1969, plaintiff Wellford, on behalf of all three plaintiffs, appealed in writing to defendant Irving.

13. On November 17, 1969, R.J. Anderson, Acting Administrator of the A.R.S., replied to Wellford's appeal, upholding defendant Mangham's denial of access to documents and the reasons given therefor (Exhibit 5).

14. Wellford responded to Anderson on January 12, 1970, taking issue with Anderson's reasons for denial and, specifically, identifying the records sought with still greater specificity, further pointing out that defendants had refused to allow plaintiffs access even to defendants' indices, and further limiting the request to documents no more than five years old (Exhibit 6).

15. On February 20, 1970, Irving responded further, granting plaintiffs access to one of three indices defendants maintain, but otherwise affirming the prior denials (Exhibit 7).

16. Plaintiffs' request and appeals complied with defendants' applicable regulations. Plaintiffs have exhausted their administrative remedies.

17. Plaintiffs' study of the P.R.D. has been severely impeded by defendants' refusal to make the requested records available.

18. Defendants are required by 5 U.S.C. 552(a)(3) to make the records requested promptly available to plaintiffs; defendants have failed and refused to do so and, unless ordered to do so by this Court, will continue to deny plaintiffs access to the records requested, in violation of 5 U.S.C. 552(a)(3) to plaintiffs' great injury.

19. The records that plaintiffs have requested and to which access has been denied in violation of the Freedom of Information Act are:

(a) Defendants' master record card file, indicating the status of complaints or other action involving manufacturers, filed by name of manufacturer;

(b) Defendants' summary file of monthly reports of all seizure and citation actions taken with the month, filed chronologically;

(c) Defendants' "Registration Jackets" containing material submitted by a manufacturer when he seeks registration of an economic poison, application forms and P.R.D. staff notations (except the product formula, in a small brown envelope marked CONFIDENTIAL); e.g., Registration File No. 201-136, the registration file of Shell Chemical Co.'s Vapona "No-Pest Strip";

(d) Defendants' "Enforcement File Folders", containing field inspectors' reports of economic poison sample collections, laboratory reports of tests of samples, recommendations for action and correspondence with the manufacturer regarding the sample; filed by number;

(e) Defendants' "Company Correspondence Folder", containing correspondence with each manufacturer of an economic poison filed by manufacturer;

(f) To the extent that they do not appear in the files described in paragraphs (a) through (e), the records maintained by defendants with respect to:

(1) the pesticide accident reporting mechanism (e.g., who reported each accident; how P.R.D. evaluated the information; action taken, if any; efforts of P.R.D. to coordinate with other governmental and private organizations to facilitate accident reporting);

(2) seizures made under the Federal Insecticides, Fungicides and Rodenticides Act (FIFRA);

(3) violations recommended for prosecution under FIFRA;

(4) procedure for and records respecting citation for violations of FIFRA, including supporting files, letters of citation, responses by manufacturers and P.R.D. follow-ups;

(5) the recall process, including procedures for recall and files in cases of recall, manufacturer action, P.R.D. supervision, quantity and location of the product recalled, memoranda respecting the effectiveness or completeness of recall action;

(6) intra- or interdepartmental committees or study groups which may have made recommendations concerning pesticide regulation;

(7) the Interdepartmental Committee on Pesticides and its working group, minutes of meetings and recommendations made at meetings.

20. Section 552(a)(3) of Title 5, U.S.C. provides that actions brought thereunder shall take precedence on the docket and shall be expedited in every way.

WHEREFORE, plaintiffs pray that this Court:

1. Issue a preliminary and permanent injunction to the defendants, their agents and subordinates, enjoining them from further withholding the agency records demanded;

2. Order the immediate production of the records for inspection and copying:

3. Order defendants to reimburse plaintiffs for the reasonable expenses incurred in bringing this proceeding;

4. Provide for expedition of proceedings on this complaint; and

5. Grant such other and further relief as may be appropriate.

MOTION TO PRODUCE

In action against Secretary of Labor to obtain information about enforcement of fair labor standards

(Wecksler v. Shultz, C.A. No. 3549-69 USDCDC)

1. Plaintiffs move this court for an order under Rule 34, F.R.Civ.P., directing the defendants to produce for inspection by plaintiffs' counsel

(a) All C.A. 15's (Inspection Reports) and C.A. 16's (Notices of Violation) in the defendants' files that were prepared in the last five years; to wit, 1965 through 1969; or, in the alternative

(b) A representative sample of such documents to be determined by this Court, as, for example, all documents dated in a specific month of each year; or all documents filed under two or more letters of the alphabet.

2. In order to protect these documents from public disclosure pending final determination of this action, the order for production should be conditioned as follows:

(a) Counsel will make no disclosure whatsoever of any matter contained in or related to such documents except to specific co- or associated counsel whose names will be furnished to the Court, to designated counsel for other parties to this action, and to the Court.

(b) Counsel shall prepare separate memoranda respecting the results of inspection of the documents which may, in the Court's discretion, be sealed pending final determination of this action and which will not be made available except as provided in paragraph 2 (a).

3. In support of this motion, plaintiffs have filed the affadavits of David Swankin, Gary B. Sellers, and Isadora Wecksler (two affidavits) and a Memorandum of Points and Authorities, part II of which relates to this motion.

HOW TO USE THE INFORMATION

Examples from a case charging discrimination in Education

HOBSON I

The 1967 Opinion of Judge J. Skelly Wright in the *Hobson v. Hansen* school case (Civil Action No. 82-66, in the United States District Court for the District of Columbia), upheld in the United States Court of Appeals in the District of Columbia, was based on statistical evidence collected from the District of Columbia Board of Education and from the United States Bureau of the Census. That evidence measured, among other things, assignment of teachers, expenditures per pupil, distribution of books and supplies, utilization of homogeneous ability grouping methods, and utilization of classroom space. When related to the color of the population and the economic level of the neighborhoods where schools are located, the data used in these measures showed definite patterns of racial and economic discrimination.

These data were presented to the court in *Hobson I* along the following lines with exhibits as indicated:

THE CHILDREN—"ABILITY GROUPING"

question:

What was the nature of the system of grouping students used in the Washington public schools and on what basis were the children assigned to the various groups?

answer:

The "track system" in the Washington public schools segregated students according to rigid and individually distinct curriculums: basic, general, regular, and honor tracks. This inflexible means of assigning children to one of four arbitrary learning levels started in the first grade and extended throughout the students' school experiences. The school system placed children in these tracks on the basis of the economic level of their neighborhood.

analysis:

Chart 5 shows the median family income and pupil placement in the District of Columbia senior high schools for the school year 1963-64. The chart shows that as the median family income of the neighborhoods increased, the percentage of high school students in those neighborhoods who were in the basic and general tracks decreased. In the poorest communities in Washington where the median family income was $3,872, 85% of the children were placed in the basic and general tracks with courses of study which did not prepare students for college. In the poorest communities, there were no honors tracks.

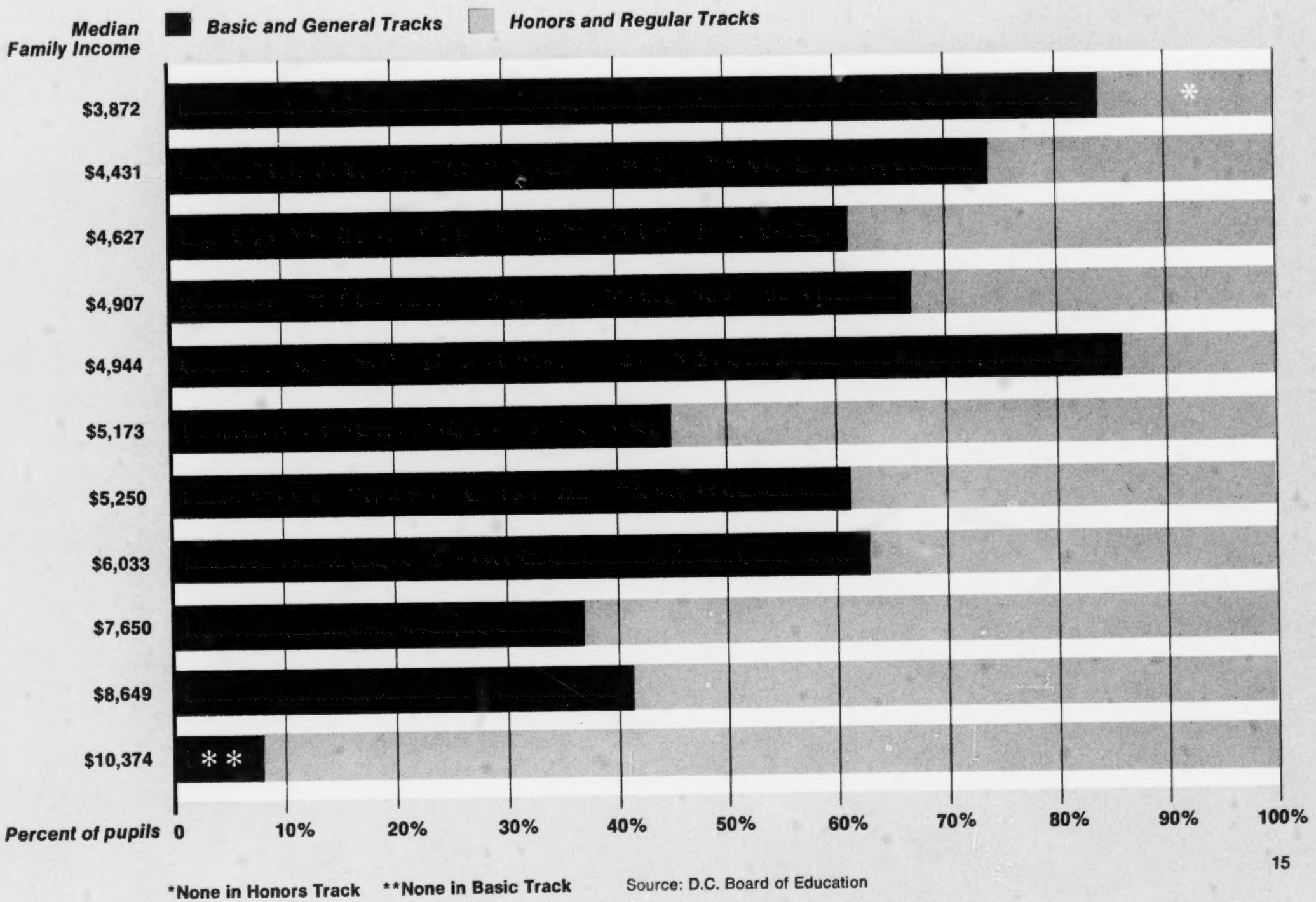
At the other extreme of the income range, in the neighborhoods where the median family income was $10,374, about 95% of the children were placed in the honors and regular tracks and there were no basic tracks.

When procedures for placing students in tracks were challenged in the court, and when the school administration was charged with placing children in the basic and general tracks without testing, the administration instituted a crash testing program. Of the total number of children tested, about 66% were found to belong in the regular track rather than in the lowest two tracks to which they had been assigned.

In 1967 the United States District Court of the District of Columbia declared this track system to be unconstitutional.

Chart 5. *D.C. Public Schools*

Median Family Income and Pupil Placement in the D.C. Senior High Schools, 1963-64



*None in Honors Track **None in Basic Track

Source: D.C. Board of Education

HOBSON II

The D.C. Board of Education refused to carry out every aspect of the Court Decree in *Hobson I.* As a result, the plaintiffs returned to the court and charged that conditions in the schools had deteriorated since the 1967 decision. This position was sustained in a subsequent opinion of Judge Wright, dated May, 1971. The plaintiffs, utilizing public school and census data submitted their case in the following manner:

REGULAR BUDGET FUNDS

question:

Does the Washington public school administration allocate equal funds to elementary schools regardless of neighborhood income level?

answer:

Students attending schools in wealthier neighborhoods received a higher per pupil expenditure of public school funds in 1965 than did those attending elementary schools in poorer neighborhoods. Data published three years later reveal very little change in this unequal pattern of expenditure per pupil.

analysis:

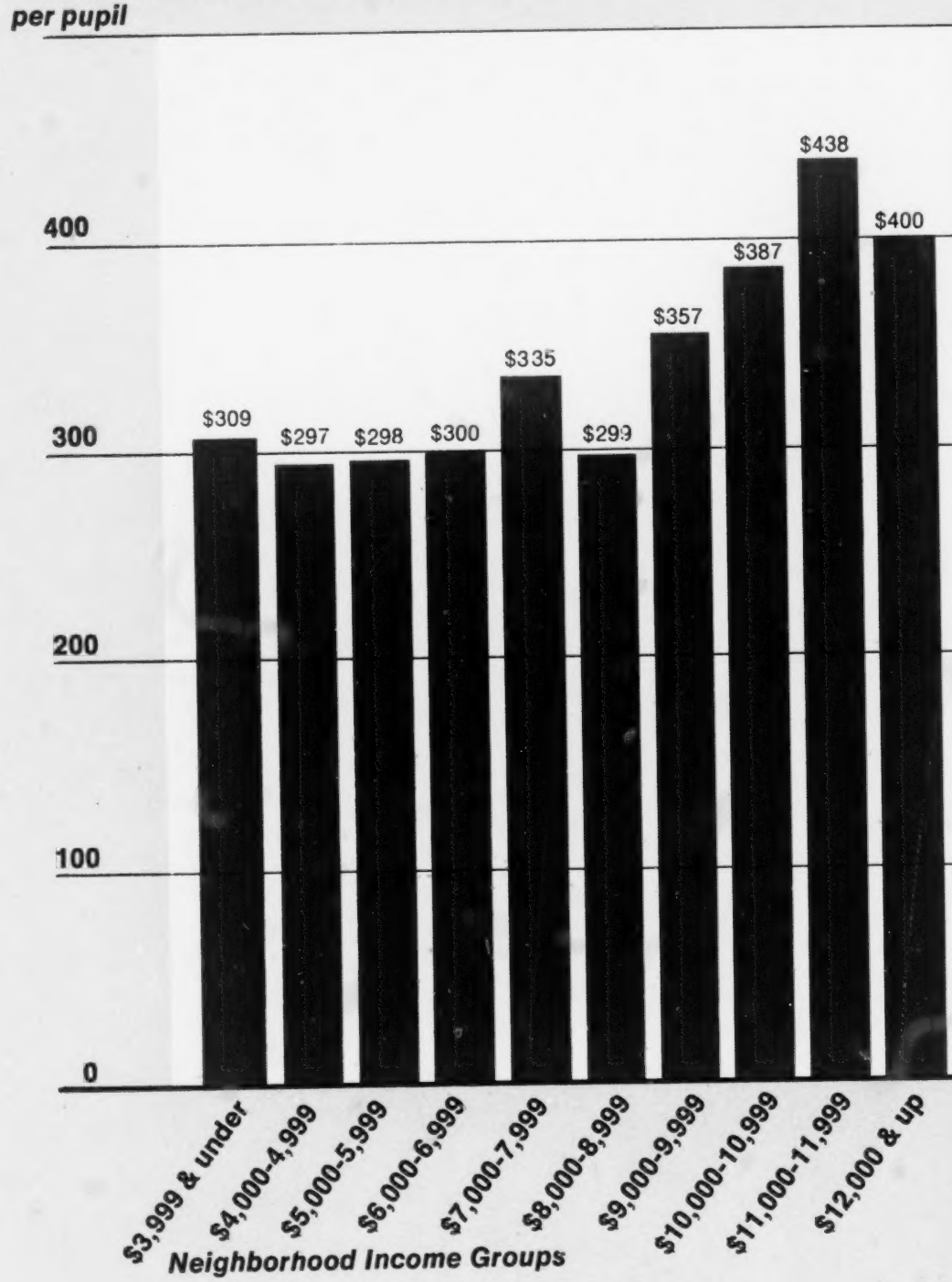
In Washington, neighborhoods with the lowest average incomes are primarily Black, and neighborhoods with the highest average incomes are primarily White.

Chart 8 shows that in 1965, elementary schools in lower and moderate income neighborhoods (Under $9,000) had average expenditures per pupil substantially lower than those in the higher income areas ($10,000 and above)—$306 contrasted with an average of $396 in the wealthier neighborhoods, about 30% higher.

Chart 9 shows that three years later, in 1968, the general pattern remained the same, although the gap had narrowed. The overall average expenditure per pupil in areas of less than $9,000 income was $391, contrasted with $442 in areas of $9,000 income and more.

Chart 8. *D.C. Elementary Schools*

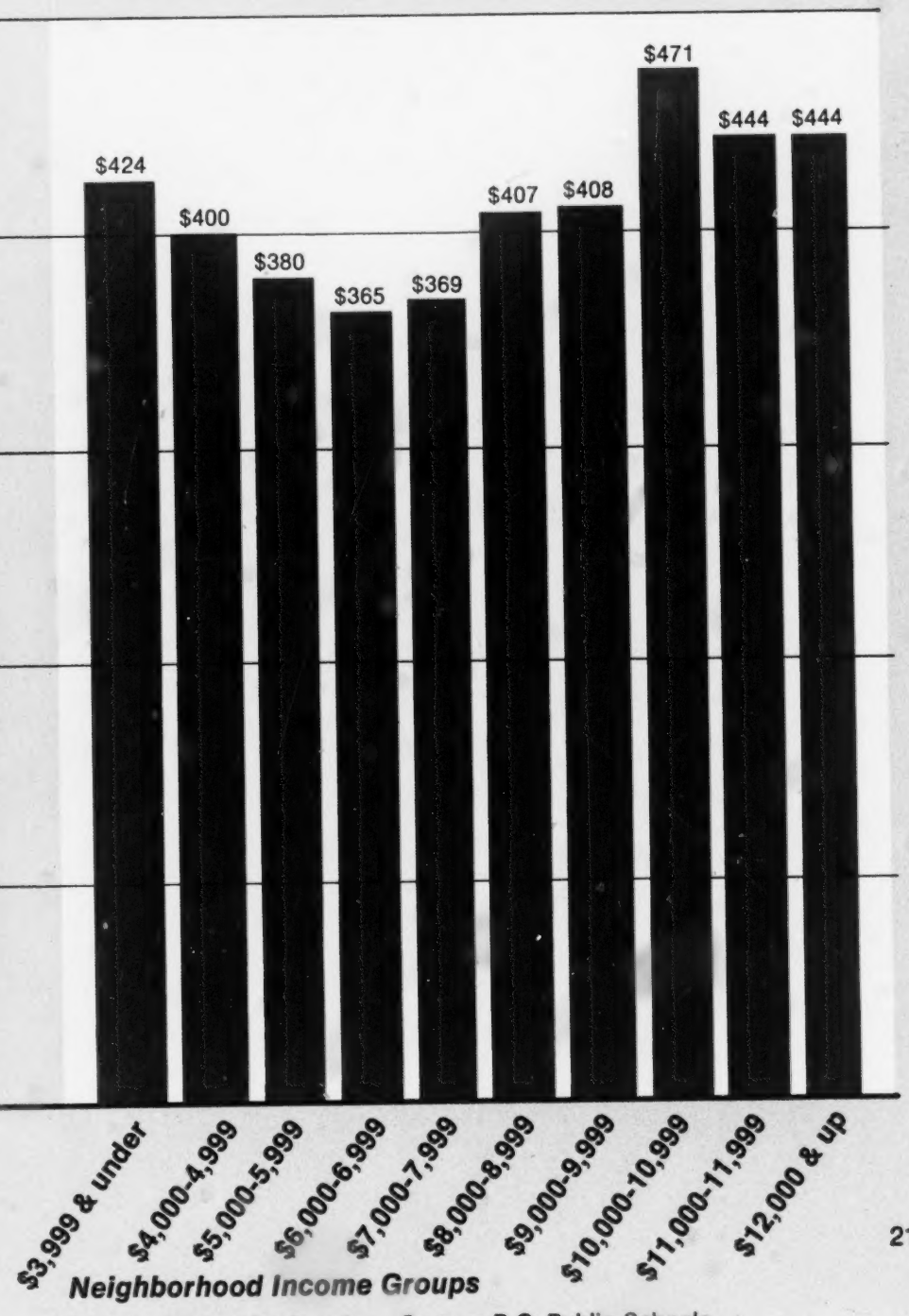
Average Expenditure per Pupil in the Elementary Schools, by Neighborhood Income Groups, 1965



Source: House Committee on Education and Labor.

Chart 9. *D.C. Elementary Schools*

Average Expenditure per Pupil in the Elementary Schools, by Neighborhood Income Groups, Fiscal Year 1968 *



*Regular budget funds only. Source: D.C. Public Schools

14
17

Examples from a case charging discrimination in Employment

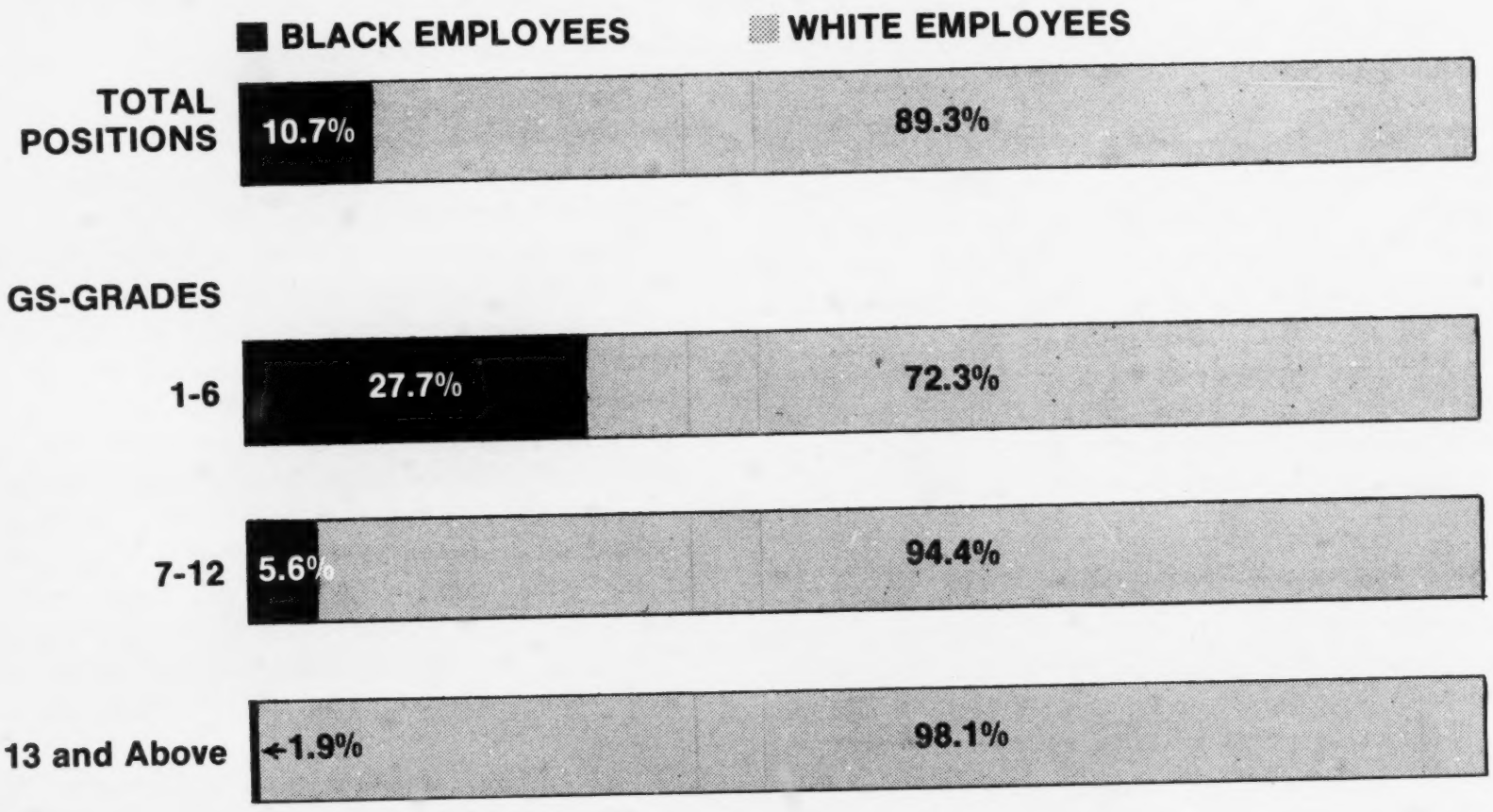
HOBSON v. HAMPTON

Job discrimination is indeed a problem in the Federal Government of the United States. Blacks, other minority groups, and women are kept in the lower grades, receive fewer promotions, and are usually the last to be hired. A suit, filed in the United States District Court in 1969, *Julius W. Hobson, et al., v. Robert E. Hampton, U.S. Civil Service Commissioner* (Civil Action No. 2603-'69), seeks to remedy the situation through the avenue of analysis of data published by the U.S. Civil Service Commission on minority group employment and the employment of women. The following are examples of some of the evidence now before the court.

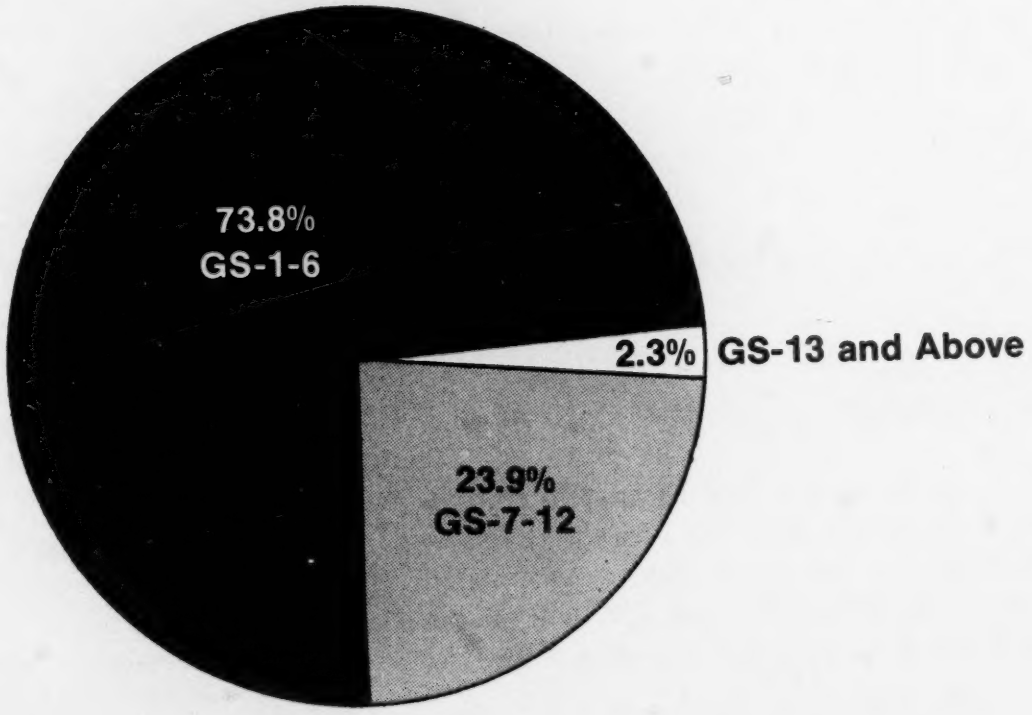
The chart shows for the year 1969 grade groupings—in General Schedule and similar pay systems—of Black employees in the federal government. The greater proportion of these employees are concentrated in the lowest GS grades 1 to 6, while at the same time, very small proportions are found in the highest GS grades 13 and above. Earlier data published by the Civil Service Commission show that Black employees have been in this or a worse position since the beginning of the publication of these data in 1962.

The plaintiffs in this case are seeking relief in the form of quota systems at every grade level and the elimination of unfair examinations which serve to keep minority groups in the lowpaying jobs in the federal government.

PERCENT DISTRIBUTION OF ALL FEDERAL GS-POSITIONS, BY RACE AND GRADE, 1969



PERCENT DISTRIBUTION OF TOTAL BLACK EMPLOYEES BY GS-GRADE, 1969 137,918 POSITIONS



SOURCE: U.S. CIVIL SERVICE COMMISSION

PAYNE V. WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

The case of *Payne v. WMATC,* 134 U.S. App. D.C. 321, 415 F2d 901 (1968) is included here because it illustrates how public information, already available in published form, can be used to force regulatory agencies to gather more information and initiate government studies of novel problems.

The basic data used in this case were derived from statistical reports required under a statute not directly involved in the rate case. The brief of the petitioners used these statistics as follows:

Rate Structure—Discrimination

Because there are no comparative analyses of costs and earnings by route, it is impossible to set a rate structure which is non-discriminatory. While net earnings may not be the sole basis for setting fares, to set fares without taking this factor into consideration at all is clearly wrong. Moreover, it would seem that this wrong falls heaviest on the poor of this city. They live generally in the most densely populated parts of the city. Bus operations in these areas are the most profitable because (a) buses are loaded more fully, (b) they are more likely to be used in off-peak hours, and (c) the equipment used is older and cheaper. There is circumstantial evidence for these conclusions in the comparisons between D.C. and Maryland operations.

	Md.	D.C.
Revenue per mile	.70	1.07
Operating expense per mile	.83	.91
Net profit or loss (before depreciation and capital expense)	.13 loss	.16 profit

From this, it would appear that District of Columbia operations are subsidizing the Maryland operation. If, as it seems, the more densely populated areas are the most profitable, we are led to the further conclusion that the poor are subsidizing the rich!

Fare Structure—Discrimination

A determination as to the margin of return which the company is to be permitted to earn does not, of course, exhaust the issues relevant to the setting of just and reasonable fares. There still remains the problem—in many ways more complex and challenging than the question of fair return—of fixing a specific schedule of rates designed to produce the revenues to which the company is entitled, and by doing so to apportion the cost of service among the individuals and groups who comprise the busriding public.[62] The Commission is required to consider not only the justness and reasonableness of fares charged or proposed to be charged by the carrier, in the sense of meeting overall revenue requirements, but also whether such fares are "unduly preferential or unduly discriminatory either between riders or sections of the Metropolitan District."

For example, we note that the present fare structure contains a uniform fare for travel within the District of Columbia. *Thus no allowance is made, as to travel within the District, for such obvious cost-affecting factors as distance travelled or passenger density. A uniform fare undeniably has the salutary effect of enhancing the mobility of city residents.*[103] *Moreover, simplicity and ease of collection are recognized ratemaking goals. These and other considerations might well lead the Commission to conclude that it would be undesirable to depart from the present uniform fare. We do think, however, that the time has come for the Commission to make a thorough and painstaking evaluation of the whole problem of rate design throughout the metropolitan area, with a view toward such modifications whether by creating new fare differentials or by adjusting those that now exist, or both—as are necessary to produce a fare structure that is rational, fair, and neither "unduly preferential [n] or unduly discriminatory."*

The case will therefore be remanded to enable the Commission to conduct such a study. . . .

[62] Bonbright, Principles of Public Utility Rates 287 (1961); Hale, Commissions, Rates and Policies, 53 Harv. L. Rev. 1103, 1118 (1940).

[103] In shaping a rational fare structure, the Commission can hardly close its eyes to such considerations even if they be termed "social" rather than "economic" or "transportation" criteria.

One publication that is absolutely vital to the success of litigation in the area of discrimination in the utilization of public services and resources is the U.S. Bureau of the Census, **Census of the Population; Economic Characteristics of the Population, 1970.** This publication will be available in the late summer of 1971. In the mean time, the 1960 data are available at most public and college libraries. Note that these data are available by state and by city.

A Successful Action Brought Under the Freedom of Information Act.

INTERROGATORIES

(Wecksler v. Shultz, C.A. No. 3549-69)

INTERROGATORIES TO DEFENDANT GEORGE GUENTHER, DIRECTOR, BUREAU OF LABOR STANDARDS

Defendant George Guenther is herewith required to answer the following interrogatories pursuant to Rule 33, F.R. Civ. P.

State separately, for each of the calendar years 1966, 1967, 1968, and 1969, and for the period from January to April, 1970:

1. The number of Inspectors' Reports (Form CA 15)* on file at the Bureau of Labor Standards, or elsewhere in the Department of Labor.

2. The number of Notices of Violation (Form CA 16)** on file at the Bureau of Labor Standards, or elsewhere in the Department of Labor.

3. The number of Inspectors' Reports (Form CA 15) which include or contain drawings of plant layout.

4. The number of Inspectors' Reports (Form CA 15) which include or contain photographs of manufacturing methods, processes, or equipment.

5. The number of Inspectors' Reports (Form CA 15) which include or contain descriptions of manufacturing methods, processes or equipment.

6. The number of Inspectors' Reports (Form CA 15) in which there is any indication that any information therein was obtained by a promise of or understanding that the information would be kept in confidence.

7. For each instance enumerated in response to Interrogatory No. 6, state the language of the promise or understanding indicated.

8. The number of Inspectors' Reports (Form CA 15) in which there is reference to information furnished orally by persons in the management of a plant.

9. In how many of the Inspectors' Reports enumerated in response to Interrogatory No. 8 does

*Styled sometimes "Safety and Health Report," "Form LSB CA 15 . (67/06)."

* *Styled sometimes "Notice of Safety and Health Violation," "Form LSB CA 16."

the name of the person giving the information appear?

10. The number of Inspectors' Reports (Form CA 15) in which there is a reference to information furnished by an employee or worker in a plant.

11. In how many of the Inspectors' Reports enumerated in response to Interrogatory No. 10 does the name of the person furnishing information appear?

12. In how many Inspectors' Reports (Form CA 15) is there any evaluation of the credibility, effectiveness, or other characteristics as a witness, of any person giving information?

13. The number of Inspectors' Reports (Form CA 15) in which there is a reference or an indication that a follow-up inspection should be made.

14. For each instance (or Inspectors' Report) enumerated in response to Interrogatory No. 13, was a follow-up inspection made?

15. For each instance enumerated in response to Interrogatory No. 14, how many follow-up inspections were made?

16. For each instance (or Inspectors' Report) enumerated in response to Interrogatory No. 13 (in which it was indicated that a follow-up inspection should be made), list all steps taken for the purpose of correcting or having the employer correct the conditions found and noted for which the follow-up inspection was to be made.

17. For each Notice of Violation (Form CA 16), state what steps, if any, were taken to secure correction of the violation; if none, state "none".

18. List by name and code number the specific violations stated in the Notices of Violation, and give for each the total number of each type of violation.

19. For each specific violation listed in response to Interrogatory No. 17, state the number for which the time required to obtain correction of the violation was less than one month; one-two months; two-three months; three-four months; four-five months; five-six months; six-nine months; nine months-one year; one year-18 months; 18 months-two years; more than two years; never corrected.

20. For how many Notices of Violation was correction achieved without another inspection of the plant?

21. For how many Notices of Violation was correction achieved after one inspection; after two inspections; after three inspections; after four inspections; after five inspections; after more than five inspections; never corrected?

22. How many Notices of Violation issued or transmitted during the calendar year resulted in formal enforcement proceedings instituted by a complaint?

23. What was the final disposition of each of the enforcement proceedings enumerated in response to Interrogatory No. 22?

24. In how many of the enforcement proceedings in which a hearing was held was the Inspectors' Report (Form CA 15) made part of the record?

25. The number of Inspectors' Reports (Form CA 15) which include only injury frequency rates computed by the employer.

26. The number of Inspectors' Reports (Form CA 15) which include only injury frequency rates computed by the inspector.

27. The number of Inspectors' Reports (Form CA 15) which include injury frequency rates computed by the inspector and injury frequency rates computed by the employer. . .

28. The number of Inspectors' Reports which include no information on injury frequency rates.

29. The number of instances enumerated in response to Interrogatory No. 25 in which the Inspectors' Report indicates that the information about injury frequency rates was submitted under a pledge of confidence.

30. The number of instances enumerated in response to Interrogatory No. 25 in which there is any indication in the file that the information about injury frequency rates was submitted under a pledge of confidence; and state the nature of the document in which the indication appears and the language of the indication.

31. The number of times Bureau of Labor Standards inspectors were denied access to a plant that they desired to inspect for compliance with the Walsh-Healey Act and its regulations.

32. For each instance enumerated in response to Interrogatory No. 31, state the date, the location, the name of the plant and the company, the reason given for denial of access, whether access was obtained later, the time elapsed between ini-

tial denial and the obtaining of access and the steps taken to gain access.

33. Which are the five most common examples of what the Bureau considers "opinions expressed" in Inspectors' Reports (Form CA 15), and the frequency of the appearance of each example?

34. Which are the five most common examples of what the Bureau considers "policy recommendations formulated" in Inspectors' Reports (Form CA 15), and the frequency of the appearance of each example?

MOTION FOR EXPEDITION

(Wecksler v. Shultz, C.A. No. 3549-69)

Plaintiffs move the Court to expedite all procedures in this matter and for reason therefor show as follows:

1. This action was filed on December 15, 1969. Since that time, defendants have moved to dismiss or, in the alternative, for summary judgement. That motion was denied. There are currently pending proceedings in discovery that require a prompt determination by this Court.

2. The Freedom of Information Act provides that actions brought thereunder "take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way." On this basis, plaintiffs request that the Court establish an expedited schedule in order to have this matter promptly heard and resolved.

ORDER FOR IN CAMERA EXAMINATION OF DOCUMENTS

(Wecksler v. Schultz, C.A. No. 3549-69)

This cause came on to be heard on pending motions on October 28, 1970. On consideration of the memoranda filed previously and the arguments of counsel, it is hereby ordered:

1. Counsel for defendants will submit to the Court, within 30 days from the date of hearing, or no later than November 27, 1970, in a sealed envelope, for inspection by the Court *in camera*, all Inspectors' Reports (Form CA 15) and all Notices of Violation (Form CA 16) for the year 1969, on file in the mid-Atlantic Regional Office of the Bureau of Labor Standards Office of Occupational Safety, filed alphabetically by company name beginning with the letters "A", "M", "P", and "W".

2. Consideration of plaintiffs' Motion for Production of Documents is deferred.

/s/ United States District Judge

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

(Wecksler v. Shultz, C.A. No. 3549-69, USDCDC)

This cause, a complaint for disclosure of documents under the Freedom of Information Act, 5 U.S.C. 552, was heard on plaintiffs' motion for summary judgement, defendants' motions to dismiss and for summary judgement having previously been denied. The Court has considered the affidavits filed by the parties, the extensive memoranda of law, and oral argument. The Court also, following the procedure suggested in *Bristol-Myers Co. v. FTC,* 424 F2d 935 (D.C. Cir. 1970), examined *in camera* a sample of more than 200 of the thousands of documents whose disclosure was sought. The size and composition of the sample was selected by agreement of the parties.

Findings of Fact

1. In July, 1969, plaintiffs requested of defendants the right to inspect and copy certain of defendant's records, designated as forms "CA 15," Inspectors' Reports, and "CA 16," Notices of Violation, of the defendant Bureau of Labor Standards.

2. Defendant Guenther as Director of the Bureau of Labor Standards refused access to files described as current and agreed to permit access to files described as not current only upon the condition that plaintiffs agree not to disclose names of persons or firms appearing in the records.

3. Plaintiffs appealed the denial of access and the conditional grant of access to the defendant Silverman, Solicitor of the defendant Department of Labor, in August, 1969.

4. In January, 1970, after this action was filed and after an order of mandamus was issued by this Court, defendants replied to, and denied, plaintiffs' appeal.

5. The records sought are Inspectors' Reports, "C.A. 15's," and Notices of Violation, "C.A. 16's," prepared by inspectors employed by defendants in connection with their inspection of plants subject to the Walsh-Healey Public Contracts Act.

6. The C.A. 15's record health and safety conditions in the plants inspected, including, among

other things, conditions that may violate the standards promulgated under the Walsh-Healey Act.

7. The C.A. 16's record violations of the standards promulgated under the Walsh-Healey Act and are transmitted to the employer whose plant is found to be in violation.

8. In the period 1966-1970 (end of first quarter), as reported by defendants, 13,284 Inspectors' Reports and 9,359 Notices of Violation were filed.

9. In the period 1966-1969, defendants carried out 115 formal proceedings against employers and declared 13 employers ineligible to receive government contracts.

Conclusions of Law

1. Plaintiffs have complied with the procedural requirements of the Freedom of Information Act, 5 U.S.C. §552, and defendants' applicable regulations, 29 C.F.R. 70.1 *et seq.*

2. The Freedom of Information Act, 5 U.S.C. §522(a)(3) places on defendants the burden of sustaining their refusal to permit access to the C.A. 15's and C.A. 16's.

3. Defendants have failed to meet the burden of showing that the records sought are exempt under any of the exemptions in 5 U.S.C. §552(b).

4. Nothing in the records sought is a trade secret or commercial or financial information within the meaning of 5 U.S.C. §522(b)(4), or is an internal memorandum within the meaning of 5 U.S.C. §552(b)(5), or is an investigatory file compiled for law enforcement purposes within the meaning of 5 U.S.C. §552(b) (7).

5. As provided in 5 U.S.C. §552(c), there exists no lawful basis for withholding access to records except the exemptions stated in 5 U.S.C. §552(b).

6. Under the Act, and also under the decisions of the Court of Appeals in *Bristol-Myers Co. v. FTC,* 424 F2d 935 (D.C. Cir. 1970) and *Grumman Aircraft Engineering Corp. v. Renegotiation Board,* 425 F2d 578 (D.C. Cir. 1970), the documents sought have been improperly withheld from plaintiffs.

ORDER

On the basis of the foregoing, it is this 1st day of February, 1971,

ORDERED, that plaintiffs' motion for summary judgment be and it hereby is granted in that defendants are to make available to plaintiffs, or to any person the plaintiffs may designate, the Inspectors' Reports (C.A. 15's) and Notices of Violation (C.A. 16's) whose disclosure plaintiffs seek, provided that

1. The effective date of this order is stayed for thirty (30) days from this date within which time the defendants may file notice of appeal and if such notice is filed then this order is stayed until the conclusion of proceedings in the Court of Appeals; and

2. Disclosure of the Inspectors' Report compiled by or for defendants on the explosion of Shell Oil and Chemical Co., Deer Park, Texas, sought specifically by intervenors Oil, Chemical and Atomic Workers, is to be withheld pending further order of this Court; and

3. Defendants may move to modify this order as to any particular document covered by this order on grounds such as that it contains witness statements, trade secrets, or is being used in the course of formal adjudicatory proceedings.

/s/ United States District Judge

SOURCE MATERIALS ON INFORMATION LAWS
GENERAL LEGAL BIBLIOGRAPHY

Leading law journal articles on the Federal Freedom of Information Act.

For a general overall theoretical view, we suggest Joan M. Katz, *The Games Bureaucrats Play: Hide and Seek Under the Freedom of Information Act,* 48 Texas Law Rev. 1261 (Nov., 1970). For a general discussion of practical aspects, we suggest Ralph Nader, *Freedom from Information: The Act and Agencies,* 5 Harvard Civil Rights Law Rev. 1 (Jan., 1970).

1. *Administrative Law—Freedom of Information Act.* File classified "top secret" is within national security exemption from the act and is not obtainable unless the classification is arbitrary and unreasonable. 83 Harv. Law Rev. 928 (Feb., 1970).

2. *Administrative Law—Freedom of Information Act.* The use of equitable discretion to modify the act. 44 Tulane Law Rev. 800 (June, 1970).

3. Caron, Jr., A. J., *Federal Procurement and the Freedom of Information Act.* 28 Fed. Bar J. 271 (summer, 1968).

4. Davis, K. C., *Information Act: A Preliminary Analysis.* 34 U. Chicago Law Rev. 761 (summer, 1967).

5. *Inspection of Public Records.* 11 Kansas Law Rev. 157 (Oct., 1962).

6. Johnstone, J. M., *Freedom of Information Act and the FDA.* 25 Food, Drug, Cosmetic Law J. 296 (June, 1970).

7. *Judicial Discretion and the Freedom of Information Act, Disclosure Denied: Consumers Union v. Veterans Administration. (301 F Supp. 796), 45 Ind. Law J. 421 (spring, 1970).*

8. *Katz, Joan M., The Games Bureaucrats Play: Hide and Seek Under the Freedom of Information Act.* 48 Texas Law Rev. 1261 (Nov., 1970).

9. Lane, M. T., *Acquisition of State Documents.* 63 Law Library J. 92 (Feb., 1970).

10. Nader, R., *Freedom from Information: The Act and Agencies.* 5 Harvard Civil Rights Law Rev. 1 (Jan., 1970).

11. Schmidt, F. S., *Freedom of Information Act and the Internal Revenue Service.* 20 U. Southern Cal. School of Law Tax Institute 79 (1968).

FREEDOM OF INFORMATION CENTER

The Freedom of Information Center, Box 858, University of Missouri at Columbia, Missouri 65201, maintains a broad interest in access to public information, particularly as it affects the rights of journalists. A wide range of publications is available at modest prices upon request. Of particular interest and significance are the following:

No. 86 Access Laws: Development
No. 87 Access Laws: Comparison
No. 88 Access Laws: Interpretations
No. 89 Access Laws: Defeats
No. 202 State Access Statutes
No. 210 California's "Open Meeting" Fight

SR 25 Access Problems on the Local Level
SR 29 Access to State Legislative Committee Hearings
SR 36 State Access Statutes: A Comparison

TEXT OF FEDERAL FREEDOM OF INFORMATION ACT

With Annotations

5 USC 552, Act of June 5, 1967, P.L. 90-23, 81 Stat. 54

§ 552. Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public—

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing. Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying—

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and

(C) administrative staff manuals and instructions to staff that affect a member of the public;

unless the materials are promptly published and copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. However, in each case the justification for the deletion shall be explained fully in writing. Each agency also shall maintain and make available for public inspection and copying a current index providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if—

(i) it has been indexed and either made available or published as provided by this paragraph; or

(ii) the party has actual and timely notice of the terms thereof.

(3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, on request for identifiable records made in accordance with published rules stating the time, place, fees to the extent authorized by statute, and procedure to be followed, shall make the records promptly available to any person. On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, has jurisdiction to en-

join the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo and the burden is on the agency to sustain its action. In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member. Except as to causes the court considers of greater importance, proceedings before the district court, as authorized by this paragraph, take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way.

(4) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(b) This section does not apply to matters that are—

(1) specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps, concerning wells.

(c) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress. Pub. L. 89-54, Sept. 6, 1966, 80 Stat. 383; Pub. L. 90-23, § 1, June 5, 1967, 81 Stat. 54.

ANNOTATIONS TO CASES

Grumman Aircraft Engineering Corp. v. Renegotiation Bd., 425 F2d 578 (C.A.D.C. 1970). Explanation of exemption (4) – general discussion.

Bristol-Meyers Co. v. F.T.C., 424 F2d 935 (C.A.-D.C. 1970). Discussion of interagency or intra-agency exemption.

Consumers Union of U.S., Inc. v. Veterans Administration, 301 F Supp. 796 (D.C. N.Y. 1969); dismissed as moot on appeal 436 F2d 1363 (2d Cir. 1971). Discussion of trade secret exemption – general.

Ackerly v. Ley, 420 F2d 1336 (C.A.D.C. 1969). Interagency or intra-agency discussion.

Wellford v. Hardin, 315 F Supp. 768 (D.C.D.C. 1970). If documents contain some exempt material, deletions may be made.

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Tuchinsky v. Selective Service System, 418 F2d 155 (C.A. Ill. 1969). Local selective service memo defined as public information.

Polymers, Inc. v. N.L.R.B., 414 F2d 999 (C.A. Vt. 1969), certiorari denied 396 U.S. 1010.

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Lamorte v. Mansfield, 438 F2d 448 (2d Cir. 1971). Agency cannot extend secrecy under investigatory exemption to people not originally within privilege.

TEXT OF CALIFORNIA INSPECTION OF PUBLIC RECORDS ACT

The most extensive recent enactment

West's California Ann. Govt. Code, § 6250-6260, added by Stats 1968 ch. 1473; amended by Stats 1970 ch. 575 § 2

Inspection of Public Records

§ 6250. Legislative finding and declaration.

In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. [Added by Stats 1968 ch. 1473 § 39; Amended by Stats 1970 ch. 575 § 1.]

§ 6251. Citation of chapter.

This chapter shall be known and may be cited as the California Public Records Act. [Added by Stats 1968 ch. 1473 § 39.]

§ 6252. Definition of terms.

As used in this chapter:

(a) "State agency" means every state office, officer, department, division, bureau, board, and commission or other state agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.

(b) "Local agency" includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; or other local public agency.

(c) "Person" includes any natural person, corporation, partnership, firm, or association.

(d) "Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

(e) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents. [Added by Stats 1968 ch. 1473 § 39; Amended by Stats 1970 ch. 575 § 2.]

§ 6253. Public records open to inspection during office hours: Right to inspect: Adoption of procedures.

Public records are open to inspection at all times during the office hours of the state or local agency and every citizen has a right to inspect any public record, except as hereafter provided. Every agency may adopt regulations stating the procedures to be followed when making its records available in accordance with this section. [Added by Stats 1968 ch. 1473 § 39.]

§ 6254. Records exempt from disclosure requirements.

Except as provided in Section 6254.7, nothing in this chapter shall be construed to require disclosure of records that are:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda which are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding such records clearly outweighs the public interest in disclosure;

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, until such litigation or claim has been finally adjudicated or otherwise settled;

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy;

(d) Contained in or related to:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies;

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of any state agency referred to in subdivision (1);

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of any state agency referred to in subdivision (1).

(e) Geological and geophysical data, plant production data and similar information relating to

utility systems development, or market or crop reports, which are obtained in confidence from any person;

(f) Records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any such investigatory or security files compiled by any other state or local agency for correctional, law enforcement or licensing purposes;

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination;

(h) The contents of real estate appraisals, engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until such time as all of the property has been acquired or all of the contract agreement obtained, provided, however, the law of eminent domain shall not be affected by this provision;

(i) Information required from any taxpayer in connection with the collection of local taxes which is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying such information;

(j) Library and museum materials made or acquired and presented solely for reference or exhibition purposes; and

(k) Records the disclosure of which is exempted or prohibited pursuant to provisions of federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(l) In the custody of or maintained by the Governor or employees of the Governor's office employed directly in his office, provided that public records shall not be transferred to the custody of the Governor's office to evade the disclosure provisions of this chapter.

(m) In the custody of or maintained by the Legislative Counsel.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with such licensing agency to establish his personal qualification for the license, certificate, or permit applied for.

Nothing in this section is to be construed as preventing any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law. [Added by Stats 1968 ch. 1473 § 39; Amended by Stats 1970 ch. 1231 § 11.5, ch. 1295 § 1.5.]

§ 6254.7. Same: Information on sources of pollution required by air pollution control district: "Trade secrets".

(a) All information, analyses, plans, or specifications that disclose the nature, extent, quantity, or degree of air contaminants which any article, machine, equipment, or other contrivance will produce, which any air pollution control district requires any applicant to provide before such applicant builds, erects, alters, replaces, operates, sells, rents, or uses such article, machine, equipment, or other contrivance, are public records.

(b) All air monitoring data, including data compiled from stationary sources, are public records.

(c) Trade secrets are not public records under this section. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it. [Added by Stats 1970 ch. 1295 § 2.]

§ 6255. Withholding records from inspection: Justification: Public interest.

The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record. [Added by Stats 1968 ch. 1473 § 39.]

§ 6256. Identifiable public records: Right to copy or information.

Any person may receive a copy of any identifiable public record or copy thereof. Upon request, an exact copy shall be provided unless impracticable to do so. Computer data shall be provided in a form determined by the agency. [Added by Stats 1968 ch. 1473 § 39; Amended by Stats 1970 ch. 575 § 3.]

§ 6257. Same: Request for copy: Fee.

A request for a copy of an identifiable public record or information produced therefrom, or a certified copy of such record, shall be accompanied by payment of a reasonable fee or deposit established by the state or local agency, or the prescribed statutory fee, where applicable. [Added by Stats 1968 ch. 1473 § 39.]

§ 6258. Enforcement of right to inspect or receive copy of records: Proceedings.

Any person may institute proceedings for injunctive or declarative relief in any court of competent jurisdiction to enforce his right to inspect or to receive a copy of any public record or class of public records under this chapter. The times for responsive pleadings and for hearings in such proceedings shall be set by the judge of the court with the object of securing a decision as to such matters at the earliest possible time. [Added by Stats 1968 ch. 1473 § 39; Amended by Stats 1970 ch. 575 § 4.]

§ 6259. Same: Order to show cause: Order to make record public: Order supporting decision refusing disclosure: Contempt.

Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain public records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the public record or show cause why he should not do so. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and such oral argument and additional evidence as the court may allow.

If the court finds that the public official's decision to refuse disclosure is not justified under the provisions of Section 6254 or 6255, he shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure. Any person who fails to obey the order of the court shall be cited to show cause why he is not in contempt of court. [Added by Stats 1968 ch. 1473 § 39.]

§ 6260. Status of existing judicial records unaffected by chapter provision.

The provisions of this chapter shall not be deemed in any manner to affect the status of judicial records as it existed immediately prior to the effective date of this section, nor to affect the rights of litigants, including parties to administrative proceedings, under the laws of discovery of this state. [Added by Stats 1968 ch. 1473 § 39.]

STATE BY STATE ANALYSIS OF INFORMATION LAWS

The aim of most statutes dealing with public access to government information is to expand the common law right which every citizen enjoys, regardless of any specific statutory provision, to inspect and copy public records.

The common law recognized a *legal right* of access to public records independent of, and prior to, any specific statutory authorization. Furthermore, the courts would enforce the citizen's right of access against any public official who denied that right unlawfully. However, under the common law, the person seeking access to records must establish an "interest" and "a legitimate purpose":

> . . .the person asking inspection must have an interest in the record or paper of which inspection is sought and the inspection must be for a legitimate purpose, but interest as a citizen and taxpayer is sufficient in some instances.[1]

Most statutes have gone far beyond the limited common law right, for, as we have already noted, this was their express purpose. Expansion of the common law right has been in many directions:

- In most, if not all statutes, removing the status and purpose requirements referred to above
- Broadening the types of information which must be made available, either by all-encompassing definitions or by limiting the exemptions usually accorded privileged classes of information such as trade secrets, confidential communications, etc.
- Simplifying and publicizing the procedures for making data available
- Imposing penalties on officials who withhold inmation
- Providing expeditious, streamlined court proceedings for obtaining the information.

In the state-by-state analyses which follow, we have tried to indicate as to each state, in a bold face headnote, the general scope of citizen's right to inspect and copy public records, as well as the areas in which that right has been expanded by statutory enactment.

This headnote is followed by the supporting statutory references together with citations to court decisions, opinions of attorneys general, and law review articles. It is important to remember that the entire body of law governing one's right to inspect is not contained solely within a particular state's statutory code.[2] It is also contained in the traditional legal references just mentioned.

State statutes are available at most public libraries in that state, and the relevant access statute can be quickly located through the statutory references given. Court decisions and other legal references can be found in law libraries. The full text of the California Statute, the most extensive recent enactment, is set out in full above as a convenient reference point for comparison with other statutory summaries.

[1] 45 Am. Jur., Records and Recording Laws, § 17.

[2] *State Access Statutes: A Comparison*, Freedom of Information Center, June, 1970, p. 1.

ALABAMA

Every citizen has a statutory right to inspect and copy public records.

The type of information which must be furnished is defined by statute.

Procedures for obtaining information are set forth in the statute.

The right to access will be enforced by the courts through proceedings specifically authorized by statute.

Statutory Reference: Code of Ala., Tit. 55, sec. 289, 6-10 (1945).

Title: Public Records

Section Titles:

289-6	Public records defined.
289-7	Offenses concerning public records; punishment.
289-8	Destruction or disposal of public records regulated.
289-9	Recovery of public records unlawfully possessed.
289-10	Assistance by the department of archives and history.

Statutory Reference: Code of Ala., Tit. 41, sec. 145-147 (1945).

Title: Right to inspect and Copy Records

Section Titles:

sec. 145	Every citizen entitled to inspect and copy public records.
sec. 146	Refusal of public officer to permit examination of records.
sec. 147	Public officers bound to give copies.

Opinions, Cases and Law Journal Articles:

Holcombe v. State ex rel. Chandler, 240 Ala. 590, 200 So. 739 (1941). Prior to statute, requiring legitimate claim before citizen has right of inspection.

Water Works Bd. of town of Parish v. White, 281 Ala. 357, 202 So. 2d 721 (1967). Allowing citizens to inspect books of water works to investigate responsibility of financial operations.

ALASKA

Every citizen has a statutory right to inspect and copy public records.

The right to access will be enforced by the courts under general legal principles.

Statutory Reference: Alaska Stats. Tit. 9, ch. 25, sec. 110 & 120 (1962).

Title: Public Records

Section Titles:

09.25.110	Inspection and copies of public records
09.25.120	Inspection and copying of public records.

ARIZONA

Every citizen has a statutory right to inspect and copy public records.

The right to access will be enforced by the courts under general legal principles.

Statutory Reference: Ariz. Revised Stats. Title 39, sec. 121 (1956).

Title: Public Records, Printing and Notices

Section Titles:

sec. 39-121 Inspection of public records

Cases:

Mathews v. Pyle, 75 Ariz. 76, 251 P. 2d 893 (1953).

Industrial Commission v. Holohan, 97 Ariz. 122, 397 P. 2d 624 (1965). Judicial limitation on right to inspect industrial commissions' reports (considered privileged material).

Opinions of the Attorney General:

56 Ops. Atty. Gen. 8. Town Records

66 Ops. Atty. Gen. 6. Personnel Records

63 Op. Atty. Gen. 57. Real estate department records.

ARKANSAS

Every citizen has a statutory right to inspect and copy public records.

The type of information which must be furnished is defined by statute.

Procedures for obtaining information are set forth in the statute.

A public official who refuses information is subject to statutory penalties.

The right to access will be enforced by the courts through proceedings specifically authorized by statute.

Statutory Reference: Ark. Stats. Title 12, ch. 28, sec. 01-07.

Title: Freedom of Information Act

Section Titles:

12-2801	Title Act
12-2802	Declaration of public policy
12-2803	Definitions
12-2804	Examination and copying of public records
12-2806	Enforcement
12-2807	Penalty

Opinions, Cases and Law Journal Articles:

Layman v. McCord, 245 Ark. 389, 432 S.W. 2d 753 (1968). Information Act judicially interpreted as serving public interest.

CALIFORNIA

Every citizen has a statutory right to inspect and copy public records.

The type of information which must be furnished is defined by statute. Exemptions are also specified.

Procedures for obtaining information are set forth in the statute.

A public official who refuses information is subject to statutory penalties.

The right to access will be enforced by the courts through proceedings specifically authorized by statute.

Statutory Reference: West's Ann. Government Code, sec. 6250-6260 (Supp. 1971).*

Title: Inspection of Public Records

Section Titles:

6250	Legislative findings and declarations.
6251	Short title.
6252	Definitions.
6253	Public records open to inspection; time; regulations governing procedure.
6254	Exemption of particular records.
6254.7	Air pollution data; trade secrets defined.
6255	Justification for withholding of records.
6256	Copies of records.
6257	Request for copy; fee.
6258	Proceedings to enforce right to inspect or receive copy of record.
6259	Order of court; contempt.
6260	Effect of chapter on prior rights and proceedings.

Cases:

Eisen v. Regents of U. of Cal., 75 Cal. Rptr. 45, 269 C.A. 2d 696 (1969). Right to information of identity of campus organizations and officers of same when status is granted by state university.

Terzian v. Superior Court in and for Alameda County, 88 Cal. Rptr. 806, 10 C.A. 3d 286 (1970).

Opinions of the Attorney General:

52 Ops. Atty. Gen. 15, (2-14-69).

53 Ops. Atty. Gen. 136 (4-7-70). Access to records of Bd. of pilot commissioner.

53 Ops. Atty. Gen. 10 (1-13-70). Privileged health records for local public health.

53 Ops. Atty. Gen. 25 (1-23-70).

52 Ops. Atty. Gen. 15 (1969). Access to State Wide Reading Results.

Periodicals:

Interagency information sharing: Access to public records a legal vacuum, 9 Santa Clara Lawyer 301 (1969).

*Reprinted in full. Supra.

COLORADO

Every citizen has a statutory right to inspect and copy public records.

The type of information which must be furnished is defined by statute.

The right to access will be enforced by the courts under general legal principles.

Statutory Reference: *Colo. Rev. Stat.* ch. 123, art. 30, sec. 8(5) (Perm. Supp. 1965).

Title: Meetings of the board of education.

Section Titles:
School district board meetings to be open and public.

Statutory Reference: *Colo. Rev. Stat.* ch. 123, art 33, sec. 2(2) (Perm. Supp. 1965).

Title: Accounts.

Section Titles:
School district financial records to be open for public inspection. Sec. 2(2).

For right to know statutes concerning other agencies, see pertinent statutes relating to these agencies.

CONNECTICUT

Every citizen has a statutory right to inspect and copy public records.

The type of information which must be furnished is defined by statute.

A public official who refuses information is subject to statutory penalties.

The right to access will be enforced by the courts through proceedings specifically authorized by statute.

Statutory Reference: Conn. Gen. Stats. Ann. Title 1, ch. 3, sec. 7-20.

Title: Provisions of General Application—Public Records and Meetings

Section Titles:

1-7	Recording by photographic process.
1-8	"Recorded" defined.
1-9	Standard paper for permanent records.
1-10	Standard ink for public records.
1-11	Loose-leaf binds for public records.
1-12	Typewriting and printing. Legal force.
1-13	Making of reproductions.
1-14	"Certified copy" defined: Evidence.
1-15	Fees for certifying copies.
1-16	Photographic reproduction of documents.
1-17	Reproductions to serve purposes of originals.
1-18	Disposition of original documents.
1-19	Access to public records.
1-20	Refusal of access: Appeal.

Opinions, Cases and Law Journal Articles:

Mrotek v. Nair, 4 Conn. Cir. 313, 231 A. 2d 95 (1967). No right to inspect bar examination scores without prior judicial authorization.

State v. Mayo, 4 Conn. Cir. 511, 236 A. 2d 342 (1967). Documents offered to support building permits are public records.

Opinions of the Attorney General:

24 Ops. Atty. Gen. 169 (Nov. 21, 1945). Recorded honorable discharges are public records.

Periodicals:

Comment on opinion of Atty. Gen. Jan. 30, 1969, 30 Conn. L. J. 12. Amounts paid to physicians under medicaid is inspectable.

Journalist—informant privilege, 33 Conn. Bar J. 220 (June, 1959).

DELAWARE

Every citizen has a statutory right to inspect and copy public records.

The type of information which must be furnished is defined by statute.

The right to access will be enforced by the courts under general legal principles.

Statutory Reference: *Del. Code Ann.* Title 29, sec. 3327(d) (1953).

Title: Disposition of public records by state, county and municipal officers and agencies penalties for violations; definition of public records.

Section Titles:

sec. 3327(d) Definition of public records.

FLORIDA

Every citizen has a statutory right to inspect and copy public records.

The type of information which must be furnished is defined by statute.

Procedures for obtaining information are set forth in the statute.

A public official who refuses information is subject to statutory penalties.

The right to access will be enforced by the courts under general legal principles.

Statutory Reference: *Fla. Stat. Ann.*, ch. 119, Tit. 10, sec. 01 (1959) added by secs. .011, .21, .31, .41, .05-.10 (Supp. 1971).

Title: Public Records.

Section Titles:

119.01	Public records open to examination by citizens.
119.011	Definitions.
119.021	Custodian designated.
119.031	Keeping records in safe places; copying or repairing and certified copies.
119.041	Destruction of records regulated.
119.05	Disposition of records at end of official's term.
119.06	Demanding custody.
119.07	Inspection and examination of records; exemptions.
119.08	Photographing public records.
119.09	Assistance of the division of archives, history and records management of the department of state.
119.10	Violation of act as a misdemeanor.

Opinions, Cases and Law Journal Articles:

Caswell v. Manhattan Fire and Marine Ins. Co., 399 F2d 471 (1968). Report of state fire marshall is public.

Mahone v. State, App. 227 So 2d 769 (1969). Police records declared to be public records.

Opinions of the Attorney General:

1965 Op. Atty. Gen. 065-32, Mar. 23, 1965. Dockets of the small claims court and those of justices of the peace are public within the purview of the statute.

1960 Op. Atty. Gen. 660-136, Aug. 12, 1960. Records of air pollution control commission are public insofar as they relate to public health and they can be used in a suit against a private company.

1959 Op. Atty. Gen. 059-249, Nov. 30, 1959. Organization records of a credit union are public and open to inspection.

GEORGIA

Every citizen has a statutory right to inspect and copy public records.

The type of information which must be furnished is defined by statute. Exemptions are also specified.

Procedures for obtaining information are set forth in the statute.

The right to access will be enforced by the courts under general legal principles.

Statutory Reference: *Code of Ga. Ann.,* Title 40, ch. 27, secs. 01-03 (Supp. 1970).

Title: Inspection of public records.

Section Titles:

40-2701	Right of public to inspect records.
40-2702	Supervision of persons photographing records; charge for services of deputy.
40-2703	Exception of certain records.

Exceptions to this chapter in those records inspection of which would be invasion of privacy and those records declared confidential by the Federal Goverment.

HAWAII

Every citizen has a statutory right to inspect and copy public records.

The type of information which must be furnished is defined by statute. Exemptions are also specified.

Procedures for obtaining information are set forth in the statute.

The right to access will be enforced by the courts through proceedings specifically authorized by statute.

Statutory Reference: *Hawaii Rev. Stat.,* Title 8, ch. 92, secs. 1-6, 21 (1968).

Title: Public agency meetings and records.

Section Titles:

92-1	Definitions—"board", "public record" defined.
92-2	Public meetings—all board meetings declared open.
92-3	Executive sessions—Limitation on the use of.
92-4	Public records; available for inspection; cost of copies.
92-5	Minutes—minutes of all boards may be public records.
92-6	Denial of inspection; application to circuit court.
92-21	Copies of records; other costs and fees.

IDAHO

Every citizen has a statutory right to inspect and copy public records.

The type of information which must be furnished is defined by statute.

Procedures for obtaining information are set forth in the statute.

The right to access will be enforced by the courts under general legal principles.

Statutory Reference: *Idaho Code,* Title 59, ch. 10, secs. 1009-10011 (1947).

Title: Miscellaneous Provisions.

Section Titles:

1009	Official records open to inspection.
10010	Officers to keep accounts. Duty of public officers to keep public account of money received and disbursed.
10011	Furnishing account books-Examination by citizens. Citizen entitled to inspect and take memoranda on public account books, or to get certified copies of same.

Statutory Reference: *Idaho Code,* Title 9, ch. 3, secs. 301, 302, 311 (1947).

Title: Public Writings.

Section Titles:

301	Public writings-Right to inspect and take copy.
302	Furnishing of certified copy-Duty of officer having custody-copy as evidence-Fees.
311	Public writings-classification.

ILLINOIS

Every citizen has a statutory right to inspect and copy public records.

The type of information which must be furnished is defined by statute. Exemptions are also specified.

The right to access will be enforced by the courts under general legal principles.

Statutory Reference: Ill. Stats. ch. 116, sec. 43.4-43.6 (Smith-Hurd Supp. 1971).

Title: State Records Act.

Section Titles:

sec. 43.4	Title
sec. 43.6	Public policy as to records; exception.
sec. 43.7	Right of access by public reproduction; fees.

Opinions, Cases and Law Journal Articles:

People ex rel. *Gibson v. Peller,* 34 Ill. App. 2d 372, 181 N. E. 2d 376 (1962). State Records Act applies to records and members of Board of Education.

People ex rel. *Hamen v. Board of Education Sch. Dist.* # 109,—Ill. App. 2d — 264 N.E. 2d 420 (1970).

INDIANA

Every citizen has a statutory right to inspect and copy public records.

The type of information which must be furnished is defined by statute. Exemptions are also specified.

Procedures for obtaining information are set forth in the statute or by agency rule.

A public official who refuses information is subject to statutory penalties.

The right to access will be enforced by the courts under general legal principles.

Statutory Reference: Burns Ann. Ind. Stats. Tit. 57, & 601-609 (Supp. 1970)

Title: Inspection and Publicity of Records and Proceedings

Section Titles:

57-601	Construction of act
57-602	Definitions
57-603	Right of inspection of public records
57-604	Citizen permitted to observe public proceedings
57-605	Exceptions to act
57-606	Violation of act by official—penalty
57-607	No secrecy in public hearings of state administrative bodies
57-608	Recorded or live broadcasts of hearings authorized
57-609	Limitation on broadcast—pooled recording or broadcasts

Opinions, Cases and Law Journal Articles:

State ex rel. County Welfare Board of Starke County v. Starke Circuit Court, 238 Ind. 35, 147 N.E. 2d 585 (1958) Access to records of county welfare board.

State ex rel. Uebelhor v. Armstrong, — Ind. —, 17 Ind. Dec. 703, 248 N.E. 2d 32 (1969). No access if individuals can show particular harm.

Szilagyi v. State ex rel. La Porte Community School Corp., 249 Ind. 400, 11 Ind. Dec. 652, 231 N.E. 2d 222 (1968).

Szilagyi v. State, — Ind. —, 233 N.E. 2d 181 (1968).

State ex rel. Wineholt, et. al. v. Laporte Superior Court, 249 Ind. 152, 230 N.E. 2d 92 (1967).

Opinions of the Attorney General (with respect to pertinent sections)

64 Ops. Atty. Gen. 399, 1961. Right to examine applications for real estate brokers and salesman license.

58 Ops. Atty. Gen. 315, 1964.

36 Ops. Atty. Gen. 199, 1964. Citizens have right to attend board meetings of County Welfare Department.

19 Ops. Atty. Gen. 120, 1967. Right to examine voting records of board meetings of Department of Financial Institutions.

Periodicals:

Judicial Discretion and Freedom of Information Act, 45 Ind. L. J. 421 (1970).

An Ombudsman for Local Government, 1 Ind. Legal F. 376.

IOWA

Every citizen has a statutory right to inspect and copy public records.

The type of information which must be furnished is defined by statute.

The right to access will be enforced by the courts under general legal principles.

Statutory Reference: Ia. Code Ann. ch. 622 sec. 622.46 as amended Ia. Laws of Session ch. 106 sec. 1-12 (1967).

Title: Public Records: Act to protect rights of citizens to examine public records and make copies.

Opinions, Cases and Law Journal Articles:

Linder v. Eckard, 261 Ia. 216, 152 N.W. 2d 833 (1967). Nature and purpose of document determines if it is public record.

Opinions of the Attorney General:

58 Ops. Atty. Gen. 16.

62 Ops. Atty. Gen. 136.

64 Ops. Atty. Gen. 295.

KANSAS

Every citizen has a statutory right to inspect and copy public records.

The type of information which must be furnished is defined by statute. Exemptions are also specified.

A public official who refuses information is subject to statutory penalties.

The right to access will be enforced by the courts under general legal principles.

Statutory Reference: Kan. Stats. Ann. ch. 45, sec. 201-203 (1957).

Title: Laws, Journals and Public Information—Records Open to Public

Section Titles:

45-201	Official public records open to inspection; exceptions.
45-202	Same; photographing records, when; rules.
45-203	Same; penalties for violations.
Cross ref.	Public Records 75-3501. — 3514.

Opinions, Cases and Law Journal Articles:

Boylan v. Warren, 39 Kan. 301, 18 P. 174 (1888). Common law right to public records.

Young v. Regents of U. of Kansas, 87 Kan. 245, 124 P. 152 (1912).

Kern v. City Com'rs of City of Newton, 145 Kan. —, 478, 77 P. 2d 954, 958 (1938).

Periodicals:

Who may examine and make copies of registration books, 11 K. L. R. 579 (1963).

Inspection of Public Records, 11 Kansas L. R. 157 (Oct. 1962).

KENTUCKY

Every citizen has a statutory right to inspect and copy public records.

The type of information which must be furnished is defined by statute.

Procedures for obtaining information are set forth by agency rule.

The right to access will be enforced by the courts under general legal principles.

Statutory Reference: *Kentucky Rev. Stats.* ch. 171, secs. 410-990 (1969). As amended by Kentucky Acts, ch. 92, secs. 32, 46, 48 (1970).

Title: State Archives and Records

Section Titles:

410	Definitions.
590	Public nature of records in department's custody.
610	Facilities for public inspection.
640	Documentation of agency matters.
650	Public nature of agency records.

LOUISIANA

Every citizen has a statutory right to inspect and copy public records.

The type of information which must be furnished is defined by statute. Exemptions are also specified.

Procedures for obtaining information are set forth in the statute.

A public official who refuses information is subject to statutory penalties.

The right to access will be enforced by the courts through proceedings specifically authorized by statute.

Statutory Reference: *La. Rev. Stat.*, Tit. 44, ch. 1, secs. 1-9, 31-41 (Supp. 1971).

Title: Public Records

Section Titles:

1	General definitions.
2	Records involved in legislative investigations. Records made in process of investigation by legislature do not fall within provisions of this chapter until investigation is over.
3	Records held by investigating officer or agency. Exception to this chapter is records held by an investigating agency to be used as evidence in prosecution of a criminal charge.
4	Tax returns; records relating to old age assistance; dependent children; liquidation proceedings; banks; insurance ratings. Exceptions to provisions of this chapter.
5	Records in custody of governor. Exceptions to provisions of this chapter.
6	Completed reports of Supervisor of Public Funds.- To be public when completed.
7	Hospital records. Generally exempt from provisions of this chapter with certain exceptions.
8	Louisiana office building corporation special provisions. Louisiana Office Building Corporation developed to be quasi-public corporation

and its records to be public records within the provisions of this chapter.

9 Records of violators of municipal ordinance and of state statutes classified as misdemeanors. Provision for expunging arrest record in certain instances when a case is disposed by acquittal, dismissal, or noble prosequi.

31 Right to examine records.

32 Duty to permit examination.

33 Availability of records. If record is presently unavailable, custodian of record must so certify and set a date and time within 3 days for inspection of the record.

34 Absence of records.

35 Suits to enforce provisions; preference. Suits to enforce provisions of this chapter shall have preference in the court in which it is brought.

36 Preservation of records.

37 Penalties for violation by custodians of records.

38 Penalties for violation by electors and taxpayers.

39 Microfilm records.

40 Additional copies of records by micro-photographic process; purchase of equipment; funds available for payment.

41 Receiving and filing map, plat, etc. for record.

Opinions, Cases and Law Journal Articles:

Diez v. Christian, App. 1964, 169 So. 2d. 185 (1964). Ordinarily appeal will not lie from an order declaring or not declaring records to be public without showing inadequate remedy at law.

Hewitt v. Webster, App. 1960, 118 So. 2d. 688 (1960). Subpoenas and returns of service on grand jury witnesses are not public records under this act.

Opinions of the Attorney General:

Op. Atty. Gen., May 29, 1967. No resolution or action can be passed in executive session of school-board unless the meeting is public.

Op. Atty. Gen., Nov. 5, 1965. Lists of bank shareholders are exempt from provisions of this act.

Op. Atty. Gen., July 13, 1965. A department of the state government cannot by itself modify provisions of this act.

Op. Atty. Gen., Mar. 4, 1963. State Racing Commission records are public within authority of this act.

MAINE

Every citizen has a statutory right to inspect and copy public records.

A public official who refuses information is subject to statutory penalties.

The right to access will be enforced by the courts under general legal principles.

Statutory Reference: *Me. Rev. Stat. Ann.,* Tit. 1, ch. 13, sec. 401, 402, 404, 405, 406 (1964).

Title: Public Records and Proceedings.

Section Titles:

401	Declaration of public policy; open meetings.
402	Public proceedings defined.
404	Executive sessions.
405	Minutes and records available for public inspection.
406	Violations.

Statutory Reference: *Me. Rev. Stat. Ann.,* Tit. 1, ch. 13, sec. 403 (Supp. 1970).

Title: Public Records and Proceedings

Section Titles:

Meetings to be open to public. Permission given to make written, taped or filmed records of proceedings.

MARYLAND

Every citizen has a statutory right to inspect and copy public records.

The type of information which must be furnished is defined by statute. Exemptions are also specified.

Procedures for obtaining information are set forth in the statute.

A public official who refuses information is subject to statutory penalties.

The right to access will be enforced by the courts under general legal principles.

Statutory Reference: *Ann. Code of Md.* Art. 76A, secs. 1-5 (Supp. 1970).

Title: Public Information

Section Titles:

76A-1	Definitions.
76A-2	Inspection of public records generally; rules and regulations; procedure when records not immediately available.
76A-3	Custodian to allow inspection of public records; exceptions; denial of right to inspection of certain records; court order restricting disclosure of records ordinarily open to inspection.
76A-4	Copies, printouts and photographs of public records.
76A-5	Penalty for violations.

Statutory Reference: *Ann. Code of Md.,* Art. 41, sec. 14, (Rep. Vol. 1971).

Title: Executive and Administrative Departments

Section Titles:

Meetings of boards, etc., to be public.

MASSACHUSETTS

Every citizen has a statutory right to inspect and copy public records.

The type of information which must be furnished is defined by statute. Exemptions are also specified.

The right to access will be enforced by the courts under general legal principles.

Statutory Reference: *Mass. Gen. Laws Ann.*, Tit. 1, ch. 4, sec. 7 (26) (Supp. 1971).

Title: Statutes

Section Titles:

7	Definitions of statutory terms; statutory construction.
7(26)	"Public records" defined.

Statutory Reference: *Mass. Gen. Laws Ann.*, Tit. 10, ch. 66, secs. 3, 10 (1969), secs. 17A, 17B (Supp. 1971).

Title: Public Records

Section Titles:

3	"Records" defined; quality of paper and film' microfilm records.
10	Public inspection of records; fees for copies.
17A	Public assistance records; public inspection; destruction. Open only to certain public officials.
17B	Public agency records. Extension of "public records' as to records of public agencies.

Opinions, Cases and Law Journal Articles:

Commonwealth v. French, 259 N. E. 2d 195 (1970). Trial judge had discretion to deny access to police reports in a capital case, though the reports were public records, where other remedies existed.

Lord v. Registrar of Motor Vehicles, 347 Mass. 608, 199 N. E. 2d 316 (1964). Accident reports filed with registrar pursuant to statute are public records because they are reports the registrar is required to receive for filing.

Opinions of the Attorney General:

1967 Op. Atty. Gen., 126, Nov. 3, 1967. Written notice of cancellation of motor vehicle liability policy is a public record open to public inspection.

1967 Op. Atty. Gen., 126, Nov. 3, 1967. Abstract of court proceedings forwarded to registrar by all courts are public records

1963 Op. Atty. Gen., 149, May 12, 1963. Only records of Bd. of Pharmacy made public are open to inspection of the public, and representatives of the press stand on the same footing as general public.

Law Journal Articles:

O'Leary, *The Right to Be Informed,* 54 Mass. L.Q. 63 (1969).

MICHIGAN

Every citizen has a statutory right to inspect and copy public records.

The right to access will be enforced by the courts under general legal principles.

Statutory Reference: Mich. Complied Laws Ann. ch. 750, sec. 491 (1964) and sec. 492 as amended (Supp. 1970).

Title: Penal Code Public Records

Section Titles:

750-491	Removal, mutilation, or destruction of public records, penalty.
750-492	Inspection and use of public records (amended P. A. 1970, No. 109, sec. 1).

Opinions, Cases and Law Journal Articles:

Booth Newspapers Inc. v. Cavanaugh, 15 Mich. App. 203, 166 N.W. 2d 546 (1968). Citizen has general right of access to public records.

Washtenaw Abstract Co. v. Mayer, 347 Mich 229 (1956).

Opinions of the Attorney General:

3111 Ops. Atty. Gen. 69 (1957-58).

2969 Ops. Atty. Gen. 147 (1957-58).

2786 Ops. Atty. Gen. 645 (1955-56).

1758 Ops. Atty. Gen. 306 (1952-54).

1249 Ops. Atty. Gen. 487.

949 Ops. Atty. Gen. 287.

1002 Ops. Atty. Gen. 282 (1949-50).

MINNESOTA

Every citizen has a statutory right to inspect and copy public records.

The type of information which must be furnished is defined by statute. Exemptions are also specified.

Procedures for obtaining information are set by agency rule.

The right to access will be enforced by the courts under general legal principles.

Statutory Reference: *Minn. Stat. Ann.* sec. 15.17, subd. 1-4 (1967).

Title: Official Records

Section Titles:

Subd. 1	Must be kept. (Definition of public records).
Subd. 2	Responsibility for records.
Subd. 3	Delivery to successor.
Subd. 4	Accessible to public. (Right to inspect under agency's procedure).

Opinions, Cases and Law Journal Articles:

Kottschade v. Lundberg, 280 Minn. 501, 160 N.W. 2d 135 (1968). General interpretation and application of statute.

Minneapolis Star v. Tribune Co. v. State, 282 Minn. 86, 163 N.W. 2d 46 (1968). Judicial definition of "officers" of state and "agency of state".

Opinions of the Attorney General:

General Use of Statute

Op. Atty. Gen., 851-C (April 14, 1944).

Op. Atty. Gen., 851-I (Dec. 21, 1950).

Op. Atty. Gen., 851-F (Jan. 21, 1942).

General Responsibility of State Officials:

Op. Atty. Gen., 851i (Aug. 16, 1965).

Op. Atty. Gen., 258 (Dec. 23, 1963).

Op. Atty. Gen., 851e (Sept. 1, 1960).

Op. Atty. Gen., 851-I (Nov. 30, 1950).

Op. Atty. Gen., 371-A (Jan. 26, 1948).

Definition of Public Record:

Op. Atty. Gen., 851-I (Mar. 19, 1963).

Op. Atty. Gen., 851-I (June 18, 1957).

Op. Atty. Gen., 851-I (Dec. 21, 1950).

Op. Atty. Gen., 371-A, 851-I (Aug. 7, 1947).

Op. Atty. Gen., 371a (Feb. 9, 1965).

Op. Atty. Gen., 851j (Oct. 23, 1959).

Exemptions from General Right to Inspect

Op. Atty. Gen., 268-L (Feb. 18, 1965).

Op. Atty. Gen., 851-I (Aug. 1955).

Op. Atty. Gen., 851-K (Oct. 27, 1954).

Op. Atty. Gen., 201, p. 357 (1950).

Op. Atty. Gen., 17, p. 46 (1950).

Op. Atty. Gen., 985F (Oct. 20, 1969).

MISSISSIPPI

Every citizen has a statutory right to inspect and copy public records.

The right to access will be enforced by the courts under general legal principles.

Statutory Reference: *Miss. Code 1942 Ann.*, Tit. 7, ch. 2, sec. 878 (Supp. 1970).

Title: Land and Conveyances

Section Titles:

878 How instrument recorded and book indexed records public-copies all records of the clerk of the chancery court are public and open to public inspection.

Opinions, Cases and Law Journal Articles:

Pollard v. State, 205 So. 2d 286 (1967). Records of chancery and circuit clerks are public documents and subject to inspection.

In re Coleman, 208 F. Supp. 199 (1962). Right of free examination of official records is the rule and inhibition of such privilege is the exception.

Logan v. Mississippi Abstract Co., 200 So. 716 (1964). Under statute, abstract company has the right to inspect and make copies of public records though having no special interest in the records.

MISSOURI

Every citizen has a statutory right to inspect and copy public records.

The type of information which must be furnished is defined by statute.

Procedures for obtaining information are set by agency rule.

A public official who refuses information is subject to statutory penalties.

The right to access will be enforced by the courts under general legal principles.

Statutory Reference: *Ann. Missouri Stat.,* ch. 109, secs. 180, 190 (Vernon's 1966).

Title: Public Records

Section Titles:

109.180	Public records open to inspection-refusal to permit inspection, penalty.
109.190	Rights of person to photograph public records-regulations.

Opinions, Cases and Law Journal Articles:

Kirkwood Drug Co. v. City of Kirkwood, 387 S.W. 2d 550 (1965). General scope of right to inspect.

Opinions of the Attorney General:

Op. Atty. Gen., 33(2-26-65). Vital statistics records not under this statute.

Op. Atty. Gen., 12(2-5-63). Records of school districts are public and inspectable.

Op. Atty. Gen., 169(6-6-63). Records with regard to parole grants and conditions are public.

Op. Atty. Gen., 64(9-13-61). Accident reports are public.

Op. Atty. Gen., 114(1-29-70). Regulations for inspecting records must be reasonable and will be set by agency responsible for records.

Op. Atty. Gen., 241(5-27-69). Motor vehicle registration records are public.

Op. Atty. Gen., 38(1-7-69). Financial statement filed under sec. 400.9-401 is public.

Op. Atty. Gen., 347(10-19-67). Records of county board of equalization are public.

MONTANA

Every citizen has a statutory right to inspect and copy public records.

The type of information which must be furnished is defined by statute.

The right to access will be enforced by the courts under general legal principles.

Statutory Reference: *Rev. Codes of Mont., 1947 Ann.,* Tit. 16, ch. 9, sec. 906 (Repl. Vol. 1967).

Title: County Commissioners-Organization-Meetings-Compensation

Section Titles:

906	Meetings and records to be public.

Statutory Reference: *Rev. Codes of Mont. 1947 Ann.,* Tit. 93, ch. 1001, secs. 1-6 (Repl. Vol. 1964).

Title: Evidence-Public Writings

Section Titles:

93-1001-1	Writings, public and private.
93-1001-2	Public writings defined.
93-1001-3	All others private.
93-1001-4	Every citizen entitled to inspect and copy public writings.
93-1001-5	Public officer bound to give copies.
93-1001-6	Four kinds of public writings.

NEBRASKA

Every citizen has a statutory right to inspect and copy public records.

The type of information which must be furnished is defined by statute.

Procedures for obtaining information are set forth in the statute.

A public official who refuses information is subject to statutory penalties.

The right to access will be enforced by the courts under general legal principles.

Statutory Reference: *Revised Statutes of Nebraska,* ch. 25, sec. 1280 (1964).

Title: Documentary Evidence

Section Titles:

1280	Official records; certified copies; duty of custodian to furnish; fees.

Statutory Reference: *Revised Statutes of Nebraska,* ch. 84, secs. 1401-1405 (Cumulative Supp. 1967).

Title: Public Meetings

Section Titles:

1401	Public meeting; defined; open to public.
1402	Public meetings; notice, place.
1403	Public meetings; memoranda; abstracts; permitted.
1404	Violations; penalty.
1405	Public meeting; executive session; when allowed; violation; effect. (Amended Session Laws, ch. 843, p. 3178 (1969.)

Opinions, Cases and Law Journal Articles:

State v. Elsworth, 61 Neb. 444, 85 N.W. 439 (1901). General right to inspect public records.

Rhodes v. Meyer, 225 F. Supp. 80 (D. C. Neb. 1963). Records of Nebraska penitentiary are not considered public records.

NEVADA

Every citizen has a statutory right to inspect and copy public records.

A public official who refuses information is subject to statutory penalties.

The right to access will be enforced by the courts under general legal principles.

Statutory Reference: *Nev. Rev. Stat.,* Tit. 19, ch. 239, sec. 010 (1967).

Title: Public Records

Section Titles:

239.010	Public books, records open to inspection, penalty.

Opinions of the Attorney General:

Op. Atty. Gen., 24 (April 23, 1963). Applications for marriage licenses filed with county clerks are public records and are available for inspection.

Op. Atty. Gen., 234, (June 3, 1965). Statute does not apply to confidential police reports.

NEW HAMPSHIRE

Every citizen has a statutory right to inspect and copy public records.

The type of information which must be furnished is defined by statute. Exemptions are also specified.

Procedures for obtaining information are set forth in the statute.

The right to access will be enforced by the courts through proceedings specifically authorized by statute.

Statutory Reference: *New Hampshire Rev. Stat. Ann.*, ch. 91-A, secs. 1-7 (Supp. 1970).

Title: Access to Public Records

Section Titles:

91-A:1	Definition of Public Proceedings.
91-A:2	Meetings open to public.
91-A:3	Executive sessions.
91-A:4	Minutes and records available for public inspection.
91-A:5	Exemptions.
91-A:6	Exclusion.
91-A:7	Violation.

Opinions, Cases and Law Journal Articles:

Selkowe v. Bean, 109 N.H. 247, 249 A. 2d 35 (1968).

DiPietro v. Nashua, 109 N.H. 174, 246 A. 2d 695 (1968).

NEW JERSEY

Every citizen has a statutory right to inspect and copy public records.

The type of information which must be furnished is defined by statute.

Procedures for obtaining information are set forth in the statute.

The right to access will be enforced by the courts through proceedings specifically authorized by statute.

Statutory Reference: N. J. Stats. Ann. Title 47, sec. 47:1A-1, 2, 3, 4. (West Supp. 1970).

Title: Examination and Copies of Public Records

Section Titles:

47:1A-1	Legislative findings.
47:1A-2	Public records; right of inspection; copies; fees.
47:1A-3	Records of investigations in progress.
47:1A-4	Proceedings to enforce right to inspect or copy.

Opinions, Cases and Law Journal Articles:

Bzozowski v. Pennsylvania-Reading Seashore Lines, 107 N. J. Super 467, 259 A2d 231 (1969). Right and procedure necessary to inspect records of board of public utility commissioners.

Accident Index Bureau v. Hughes, 46 N. J. 160, 215 A2d 529 (1965). Citizen only has limited right to inspect public records.

NEW MEXICO

Every citizen has a statutory right to inspect and copy public records.

The type of information which must be furnished is defined by statute. Exemptions are also specified.

A public official who refuses information is subject to statutory penalties.

The right to access will be enforced by the courts under general legal principles.

Statutory Reference: *N. M. Stat. 1953 Ann.*, ch. 71, art. 5, secs. 1, 2, 3 (Repl. Vol. 1961).

Title: Inspection of public records

Section Titles:

71-5-1	Right to inspect public records-Exceptions.
71-5-2	Officers to provide opportunity and facilities for inspection.
71-5-3	Penalties for violation of act.

NEW YORK

Every citizen has a statutory right to inspect and copy public records.

The type of information which must be furnished is defined by statute.

Procedures for obtaining information are set forth in the statute.

The right to access will be enforced by the courts under general legal principles.

Statutory Reference: N. Y. Education Law sec. 144 (McKinney 1969).

Title: Definition of Public Records

Statutory Reference: N. Y. County Law sec. 925 (McKinney, 1950).

Title: Certificate of Searching Records and Copies

Statutory Reference: N. Y. Gen. Municipal Law sec. 51 (McKinney, 1965).

Title: Prosecution of Officers for Illegal Acts

Statutory Reference: N. Y. Judiciary Law sec. 255 (McKinney, 1968).

Title: Sec. 255 Clerk must search files upon request and certify as to result. See 255-b Dockets of clerks to be public.

Statutory Reference: N. Y. Public Officers Law sec. 66 (McKinney, 1952).

Section Title:

sec. 66	Persons having custody of papers in public offices to search files and make transcripts.
sec. 66-a	Accident reports kept by police authorities to be open to the inspection of persons interested.

Opinions, Cases and Law Journal Articles:

N. Y. Cases. (Only general cases which define the judicial interpretation of the statutes are listed).

Cases Under sec. 144.
Werfel v. Fitzgerald, 23 App. Div. 2d 306, 260 N. Y. Supp. 2d 791 (1965).

Marmo v. N.Y. City Bd. of Ed., 56 Misc. 2d 517, 289 N. Y. Supp. 2d 51 (1968).

Cases Under sec. 51.
Sorley v. Clerk, Majors and Bd. of Trustees of Inc. Village of Rockville Centre, 30 App. Div. 2d 822, 292 N.Y. Supp. 2d 575 (1968).

Sears Roebuck & Co. v. Hoyt, 107 N.Y. Supp. 2d 756 (1951).

N. Y. Post Corp. v. Moses, 12 App. Div. 2d 243, 210 N. Y. Supp. 2d 88, reversed on other grounds 10 N. Y. 2d 199, 219 N. Y. Supp. 2d 7, 176 N. E. 2d 709 (1961).

1969 Op. State Compt. 587.

15 Op. State Compt. 310 (1959).

Cases Under sec. 66.

Looby v. Lomenzo, 60 Misc. 2d 16, 301 N.Y. Supp. 2d 163 (1969).

Sorley v. Lister, 33 Misc. 2d 451, 218 N.Y. Supp. 2d 215 (1961).

NORTH CAROLINA

Every citizen has a statutory right to inspect and copy public records.

The type of information which must be furnished is defined by statute.

Procedures for obtaining information are set forth in the statute.

A public official who refuses information is subject to statutory penalties.

The right to access will be enforced by the courts under general legal principles.

Statutory Reference: *General Stats. North Carolina,* ch. 132, sec. 1-9 (1964).

Title: Public Records

Section Titles:

132-1	Public Records defined.
132-2	Custodian designated.
132-3	Destruction of records regulated.
132-6	Inspection and examination of records.
132-9	Violation of chapter and misdemeanor.

Opinions, Cases and Law Journal Articles:

Newton v. Fisher, 98 N.C. 20, 3 S.E. 822 (1887). Common law right to inspect.

In re Robertson, 7. N.C. App. 186, 171 S.E. 2d 801 (1970).

NORTH DAKOTA

Every citizen has a statutory right to inspect and copy public records.

The right to access will be enforced by the courts under general legal principles.

Statutory Reference: *N. D. Century Code Ann.* Tit. 44, ch. 44-04, secs. 18, 19 (1960).

Title: Duties of Officers

Section Titles:

44-04-18	Access to public records.
44-04-19	Open governmental meetings.

Opinions, Cases and Law Journal Articles:

State ex rel. Williston Herald Inc. v. O'Connell, 151 N. W. 2d 758 (1967). Right of inspection does not extend to criminal records of county court of increased jurisdiction until such proceedings are completed and entered in the docket of the court.

Grand Forks Herald Inc. v. Lyons, 101 N. W. 2d 543 (1960). Access statute does not apply to county court records.

OHIO

Every citizen has a statutory right to inspect and copy public records.

The type of information which must be furnished is defined by statute. Exemptions are also specified.

Procedures for obtaining information are set forth in the statute or by agency rule.

A public official who refuses information is subject to statutory penalties.

The right to access will be enforced by the courts under general legal principles.

Statutory Reference: *Ohio Rev. Code Ann.,* Tit. 1, sec. 149.40-149.99 (Page's 1969).

Title: Documents, Reports and Records

Section Titles:

149.40	Records and archives defined.
149.43	Availability of public records.
149.44	Availability of records in centers and archival institutions.
149.99	Penalty.

Statutory Reference: *Ohio Rev. Code Ann.,* Tit. 1, ch. 121, secs. 0.21, 0.22 (Page's 1969).

Title: State Departments

Section Titles:

121.21	Records to be made and preserved.
121.22	Meetings of governmental bodies to be public; exemptions.

Patterson v. Ayers, 171 Ohio St. 369, 171 N. E. 2d 508 (1960). Judicially defined right to inspect public records.

State ex. rel. Louisville Title Ins. Co. v. Brewer, 147 Ohio St. 161, 70 N. E. 2d 265 (1947). Exemption on right to inspect.

Curran v. Board of Commrs., 51 Oh. 2d 321, 259 N. E. 2d 7571 (1969). A county park board is a governmental unit and is subject to inspection statute.

Opinions of the Attorney General:

1961 Op. Atty. Gen., 2129. General definition of duties of officials.

OKLAHOMA

Every citizen has a statutory right to inspect and copy public records.

The type of information which must be furnished is defined by statute. Exemptions are also specified.

The right to access will be enforced by the courts under general legal principles.

Statutory Reference: *Okla. Stat. Ann.,* Tit. 51, Ch. 1, sec. 24 (1962).

Title: Officers

Section Titles:

Records open for public inspection.

Opinions, Cases and Law Journal Articles:

Pyramid Life Ins. Co. v. Masonic Hospital Ass'n of Payne County, Okla., 191 F. Supp. 51 (1961). Records required by force of statute, regulation or judicial decision to be retained are at least quasi-public in nature. Right to inspect these does not require a legal interest by persons so requesting.

OREGON

Every citizen has statutory right to inspect and copy public records.

The type of information which must be furnished is defined by statute. Exemptions are also specified.

Procedures for obtaining information are set by agency rule.

The right to access will be enforced by the courts under general legal principles.

Statutory Reference: *Ore. Rev. Stat.,* Tit. 19, sec. 192.005-192.220 (1969).

Title: Public Records and Reports

Section Titles:

192.005	Definitions.
192.010	Right to inspect public writings.
192.020	Public officers bound to give copies.
192.030	Right to inspect public records.
192.040	Mailing, filing and recording records by photocopying.
192.210	Definitions.

Opinions, Cases and Law Journal Articles:

MacEwan v. Holm, 226 Or. 27, 359 P. 2d 413 (1961). How record will be categorized a "public record". Major discussion of right to inspect statute.

Opinions of the Attorney General:

34 Op. Atty. Gen., 1039 (1970). Abandoned property files are public records.

34 Op. Atty. Gen., 456 (1969). Exemption from statute.

34 Op. Atty. Gen., 306 (1968). Voters' pamphlet material is public record when on file with Sec. of State.

33 Op. Atty. Gen., 540 (1966-68). Exemption.

33 Op. Atty. Gen., 388 (1966-68). Right to former inmates of state institutions to inspect medical files.

33 Op. Atty. Gen., 273 (1966-68). Federal Statutory exemption.

32 Op. Atty. Gen., 218 (1964-66). Written conciliation agreements made by Bureau of Labor are public.

29 Op. Atty. Gen., 149 (1958-60). Records of teacher's certificates are public.

PENNSYLVANIA

Every citizen has a statutory right to inspect and copy public records.

The type of information which must be furnished is defined by statute. Exemptions are also specified.

Procedures for obtaining information are set forth in the statute.

A public official who refuses information is subject to statutory penalties.

The right to access will be enforced by the courts through proceedings specifically authorized by statute.

Statutory Reference: *Purdon's Pa. Stat. Ann.,* Tit. 65, ch. 3, sec. 66.1-66.3 (1959); sec. 66.4 as repealed in part by 17 P.S. sec. 211.508 (a)(90) (Supp. 1971).

Title: Official Documents, Records, and Seals

Section Titles:

66.1	Definitions.
66.2	Examination and inspection
66.3	Extracts copies, photographs, or photostats.
66.4	Appeal from denial of right.

Statutory Reference: *Purdon's Pa. Stat. Ann.,* Tit. 65, ch. 12, sec. 251-254 (1959).

Title: Meetings

Section Titles:

251	Definitions
252	Open meetings
253	Public notice of meetings
254	Penalty for violation.

Opinions, Cases and Law Journal Articles:

Argo v. Goodstein, 438 Pa. 468, 265 A 2d. 783 (1970). State Department of Health records were privileged under statute and regulations.

City of Philadelphia v. Rucyzynski, 24 D. & C. 2d 478 (1962). Accident reports prepared by police are public records within authority of these sections.

Bogert v. Allentown Housing Authority, 426 Pa. 151, 231 A. 2d 147 (1967). City Housing Authority is within 65 P.S. sec. 251 *et seq.*

Law Journal Articles:

Kernick v. Jones, 113 Pa. L. J. 546 (1966). This act supplants all prior enactments governing taxpayers' access to public records. Right to know: Act generally.

RHODE ISLAND

Every citizen has a common law right to inspect and copy public records.

The right to access will be enforced by the courts under general legal principles.

Statutory Reference: None

Opinions, Cases and Law Journal Articles:

Nolan v. McCoy, 77 R.I. 96, 73 A. 2d 693 (1950). Common Law right to inspect public records.

Bilodeau v. Dolan, 85 R.I. 348, 350 (1957). Remedy of mandamus.

SOUTH CAROLINA

Every citizen has a statutory right to inspect and copy public records.

The type of information which must be furnished is defined by statute. Exemptions are also specified.

Procedures for obtaining information are set by agency rule.

The right to access will be enforced by the courts under general legal principles.

Statutory Reference: *Code of Law of S. C.*, Tit. 9, sec. 2-14 (Cumulative Supp. 1970).

Title: Archives Act

Section Titles:

9-3	Objects and purposes of Department.
9-11	Records available to public; protection; copies.

Opinions of the Attorney General:

1967-68 Op. Atty. Gen., 188 Tax Commission Records.

1967-68 Op. Atty. Gen., 137 Classification and salary records of the Dept. of Health contained in personnel files are public.

1964-65 Op. Atty. Gen., 82 Exemption.

1954-55 Op. Atty. Gen., 77 Definition of which citizens have right to inspect.

NOTE: It should be noted that individual Sections of code give right to inspect records (*e.g.*, motor vehicles statutes).

SOUTH DAKOTA

Every citizen has a statutory right to inspect and copy public records.

The type of information which must be furnished is defined by statute. Exemptions are also specified.

Procedures for obtaining information are set forth in the statute.

The right to access will be enforced by the courts under general legal principles.

Statutory Reference: *S. D. Comp. Laws Ann.*, Tit. 1, ch. 1-25, sec. 1-25-1 to 1-25-4 (1967).

Title: Meetings of Public Agencies

Section Titles:

1-25-1	Meetings of public agencies to be open.
1-25-2	Executive or closed meetings-Purposes and authorization.
1-25-3	State agencies to keep and file minutes with auditor-general-Availability to public.
1-25-4	Exemptions from requirements to file minutes Availability to public.

Statutory Reference: *S. D. Comp. Laws Ann.*, Tit. 9, ch. 9-18, sec. 9-18-2 (1967).

Title: Municipal Records and Proceedings

Section Titles:

9-18-2	Records of acts and proceedings of municipal officers- Open to public.

Statutory Reference: *S. D. Comp. Laws. Ann.*, Tit. 1, ch. 1-27, sec. 1-27-1 to 1-27-3 (1967).

Title: Public Records and Files

Section Titles:

1-27-1	Records open to inspection.
1-27-2	Criminal records not open to inspection.
1-27-3	Records declared secret.

Opinions of the Attorney General:

'45-'46 Op. Atty. Gen., 389. Confidential nature of records pertaining to aid to dependent children.

TENNESSEE

Every citizen has a statutory right to inspect and copy public records.

The type of information which must be furnished is defined by statute. Exemptions are also specified.

Procedures for obtaining information are set forth in the statute.

A public official who refuses information is subject to statutory penalties.

The right to access will be enforced by the courts under general legal principles.

Statutory Reference: *Tenn. Code Ann.*, Tit. 15, sec. 304-307 (Cumulative Supp. 1970).

Title: Public Records-Miscellaneous Provisions

Section Titles:

304	Records open to public inspection.
305	Confidential Records
306	Violation of secs. 15-304—15-307 a misdemeanor.
307	Right to make copies of public records.

Opinions, Cases and Law Journal Articles:

State v. Williams, 110 Tenn. 549, 75 S. W. 948 (1903). Common law right to inspect.

No cases under new statute.

TEXAS

Every citizen has a common law right to inspect and copy public records.

The type of information which must be furnished is defined by statute.

Procedures for obtaining information are set forth in the statute.

The right to access will be enforced by the courts under general legal principles.

Statutory Reference: *Rev. Civil Stat. of State of Tex. Ann.*, Tit. 89, art. 5441a., sec. 1 (Vernon's 1970).

Title: Library and Historical Commission

Section Titles:

sec. 2	Definitions (Public records defined).
sec. 6	Private or public use of photographic reproductions.

Opinions, Cases and Law Journal Articles:

Palacious v. Corbett, 172 S. W. 777 (1915). Common law right to inspect public records.

Morris v. Hoerster, 377 S. W. 2d 841 (Tex. Civ. App. 1964). Limited Right to inspect.

Morris v. Smiley, 378 S.W. 2d 149 (Tex. Civ. App. 1964). Who can inspect.

UTAH

Every citizen has a statutory right to inspect and copy public records.

Procedures for obtaining information are set forth in the statute.

The right to access will be enforced by the courts under general legal principles.

Statutory Reference: *Utah Code Ann.*, Tit. 78, ch. 26, sec. 78-26-1 to 78-26-3 (1953).

Title: Public and Private Writings.

Section Titles:

78-26-1	Classes of public writings.
78-26-2	Right to inspect and copy.
78-26-3	Officials to furnish certified copies.

Opinions, Cases and Law Journal Articles:

Conover v. Bd. of Ed. of Nebo Sch. Dist., 1 Utah 2d 375, 267 P. 2d 768 (1954). Untranscribed notes of clerk of local board of education are not public records.

Deputy Sheriffs Mutual Aid Ass. of Salt Lake County v. Salt Lake County Deputy Sheriffs Mint System Comm., 24 Utah 110, 466 P. 2d 836 (1970). Eligible register and promotional register were public records.

VERMONT

Every citizen has a statutory right to inspect and copy public records.

The type of information which must be furnished is defined by statute. Exemptions are also specified.

A public official who refuses information is subject to statutory penalties.

The right to access will be enforced by the courts under general legal principles.

Statutory Reference: *Vt. Stat. Ann.*, Tit. 1, sec. 311, 314 (1958).

Title: Public Information

Section Titles:

312	Declaration of public policy.
312	Right to attend meetings of public agencies.
313	Executive sessions minutes; minutes.
314	Penalty.

NOTE: (Tit. 3, sec. 311. Records of department of personnel: public except when held confidential for reasons of public policy.)

Opinions, Cases and Law Journal Articles:

Rutland Cable T.V. v. Rutland, 122 Vt. 1, 163 A. 2d 117 (1960). Minutes from public and executive sessions are required to be open.

Opinions of the Attorney General:

1962-64 Op. Atty. Gen. 356, Exemption.

1962-64 Op. Atty. Gen., Minutes of meetings of Vermont State College Board are public.

1966-68 Op. Atty. Gen., 108. Legislative committees and "executive session" exemption. Minutes are not required to be verbatim.

VIRGINIA

Every citizen has a statutory right to inspect and copy public records.
The type of information which must be furnished is defined by statute. Exemptions are also specified.
Procedures for obtaining information are set forth in the statute.
The right to access will be enforced by the courts through proceedings specifically authorized by statute.
Statutory Reference: *Code of Va. Ann.*, Tit. 2.1, ch. 21, sec. 2.1-340 to 2.1-346 (Supp. 1970).
Title: Virginia Freedom of Information Act
Section Titles:

2.1-340	Short title.
2.1-341	Definitions.
2.1-342	Official records to be open to inspection; exceptions.
2.1-343	Meetings to be public except as otherwise provided; information as to time and place.
2.1-344	Executive or closed meetings.
2.1-345	Agencies to which chapter inapplicable.
2.1-346	Proceedings for enforcement of chapter.

WASHINGTON

Every citizen has a statutory right to inspect and copy public records.
The type of information which must be furnished is defined by statute.
The right to access will be enforced by the courts under general legal principles.
Statutory Reference: *Rev. Code of Wash., Ann.*, Tit. 40, sec. 40.04.010 (1961).
Title: Public Documents
Section Titles:

40.04.010	Definition

Statutory Reference: *Rev. Code of Wash. Ann.*, Tit. 40, sec. 40.14.10 (1961).
Title: Perservation and Destruction of Public Records
Section Titles:

40.14.010	Definition and Classification of public records

Opinions, Cases and Law Journal Articles:
Price v. Peterson, 198 Wash. 490, 88 P. 2d 842 (1939). Definition of public records.
State v. Reed, 36 Wash. 638, 79 P. 306 (1905). General common law right to inspect.

Opinions of the Attorney General:
Op. Atty. Gen., No. 53-55-61. Right of state college student to demand destruction of registrar's transcript of grades.

WEST VIRGINIA

Every citizen has a common law right to inspect and copy public records.
The right to access will be enforced by the courts under general legal principles.
Statutory Reference: None
The right to inspect public records in West Virginia is a common law right.

Opinions, Cases and Law Journal Articles:
State v. Harrison, 130 W. Va. 246, 43 S. E. 2d 214 (1947). Right to inspect is limited to those who have interest in record sought for inspection. Inspection must be for some legitimate purpose.

Charleston Mail Ass'n v. Kelly, 149 W. Va. 766, 143 S.E. 2d 139 (1965). Records of deposits which state Treasurer is required by statute to keep are "public" for inspection purposes.

WISCONSIN

Every citizen has a statutory right to inspect and copy public records.
The type of information which must be furnished is defined by statute.
Procedures for obtaining information are set by agency rule.
A public official who refuses information is subject to statutory penalties.
The right to access will be enforced by the courts through proceedings specifically authorized by statute.
Statutory Reference: *Wisc. Stat. Ann.,* Sec. 19.21, 19.22 (West's 1970).

Section Titles:

19.21	Custody and delivery of official property and records.
19.22	Proceedings to compel the delivery of official property.

Statutory Reference: *Wisc. Stat. Ann.,* sec. 59.71 (West's 1957). And sec. 59.14 (West's Supp. 1970).
Section Titles:

59.71	Records where kept; public examination; rebinding; transcribing.
59.14	Offices, where kept; when open (Penalty provision).

Opinions, Cases and Law Journal Articles:
State ex rel. Journal Co. v. County Court for Racine County, 43 Wisc. 2d 297, 168 N.W. 2d 836 (1969). Who may inspect records. General right to inspect.
Board of School Dirs. of City of Milwaukee v. Wis. Employment Relations Comm., 42 Wisc. 2d 637, 168 N. W. 2d 92 (1969). List of newly-hired teachers is public.

Beckon v. Emery, 36 Wisc. 2d 510, 153 N. W. 2d 501 (1967). Traffic citations are public. Discussion of scope of right to inspect.

State ex rel. Youmans v. Owens, 28 Wisc. 2d 672, 139 N.W. 2d 241 (1966). Right to inspect is expanded beyond common law right.

Opinions of the Attorney General:

Op. Atty. Gen., July 16, 1969. Discussion of right to inspect.

20 Op. Atty. Gen., 493 (1931). Reports of school district clerk are public records.

38 Op. Atty. Gen., 22 (1949). Duties of municipal clerks.

WYOMING

Every citizen has a statutory right to inspect and copy public records.

The type of information which must be furnished is defined by statute. Exemptions are also specified.

Procedures for obtaining information are set forth in the statute.

A public official who refuses information is subject to statutory penalties.

The right to access will be enforced by the courts through proceedings specifically authorized by statute.

Statutory Reference: *Wyo. Stat. 1957 Ann.*, Tit. 9, ch. 7.1 secs. 9-692.1—9-692.5 (Supp. 1969).

Title: Public Records

Section Titles:

9-692.1	Classification and definitions.
9-692.2	Inspection-Generally.
9-692.3	Same-Grounds for denying right of inspection; statement of grounds for denial; order to show cause; order to restrict disclosure; hearing.
9-692.4	Copies, printouts or photographs; fees.
9-692.5	Penalty.

A PARTING WORD

Like Tennyson's *Brook,* the struggle for equal justice goes on forever. It must be pressed on every hand by the governed as well as the governors, the professionals as well as the non-professionals, and the educated as well as the not-so-educated, by you and by me.

Vital to justice is intelligence born out of information. We, therefore, throw down this book as a gauntlet to be used in the quest for that intelligence. Pick it up and use it now! Use it as a tool to enforce your right to know through litigation.

There is no time in the future at which we can become informed. The challenge is in the moment, and the need for *The Damned Information* is always right now.

ACKNOWLEDGEMENTS

To the young law students and law graduates who volunteered much of their time in the preparation of this volume. To the parents in the several cities throughout the United States who contacted WIQE to relate their difficulties in acquiring information, particularly about their public schools, thus prompting the need for a publication like THE DAMNED INFORMATION. Finally to my wife, Tina, who volunteers much of her time to WIQE as an editor and rewriter.

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